159-21

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 308.

OZIAS TOWNSEND, APPELLANT,

vs.

THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY, THE SANDOVAL COAL AND MINING COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 30, 1891.

(14,869.)

(14,869.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 308.

OZIAS TOWNSEND, APPELLANT,

vs.

THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY, THE SANDOVAL COAL AND MINING COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Subpœna	23	15
Marshal's return	24	15
Entry of appearance of defendants	26	16
Demurrer to bill	26	17
Order sustaining demurrer, with leave to amend bill	29	18
Motion by defendants to dismiss bill	30	19
Order granting leave to file amended bill, and rule on defendants to answer	30	19
Amended bill	31	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1894.

	Original.	Print.
Answer of Sandoval Coal and Mining Company to amended bill	56	36
Answer of Charles Rhinehardt and others to amended bill	72	45
Replication to answer of Sandoval Coal and Mining Company	86	55
Replication to answer of Charles Rhinehardt and others	87	56
Order appointing C. C. Cowen special examiner	88	56
Evidence	89	57
Testimony of John B. Mears	90	57
Henry Wellhoener	122	77
Charles E. Gartside	170	105
Ozias Townsend	172	107
Deposition of George W. Wharton in Marion circuit court	209	129
Testimony of Lambert Nolan	235	145
Charles Rhinehardt	258	158
James S. Martin	284	173
Isaac Main	306	186
Exhibit A (Mears)—Deed from Samuel Ewing *et ux.* to Mining Company, January 9, 1878	367	223
Exhibit B (Wellhoener)—License, &c., to form mining company	369	223
By-laws of the St. Louis and Sandoval Coal and Mining Company	372	225
Exhibit C (Townsend)—Authority to open books for subscription to St. Louis and Sandoval Coal and Mining Company	378	228
Exhibit D (Townsend)—Certificate of incorporation of St. Louis and Sandoval Coal and Mining Company	379	229
Subscription to capital stock of St. Louis and Sandoval Coal and Mining Company	382	230
Deed from Ellis *et al.* to Ozias Townsend, November 6, 1877	385	232
Deed from Rockwell *et al.* to Ozias Townsend, Nov. 6, 1877	392	236
Proceedings of stockholders of St. Louis and Sandoval Coal and Mining Company	399	241
Letter from Isaac Main to Ozias Townsend, May 23, 1878	408	247
Record from circuit court of Marion county	409	248
Bill for receiver	409	249
Decree	416	253
Report of receiver	421	256
Answer of Townsend *et al.* to bill for receiver	424	258
Answer of mining company to bill for receiver	426	260
Decree	429	262
Report of receiver	431	263
Supplemental bill	433	264
Answer to supplemental bill	436	267
Cross-bill	441	270
Answer to cross-bill	462	283
Replication to answer	468	287
Final decree	469	287
Proceedings of board of directors of St. Louis and Sandoval Coal and Mining Company	474	291
Decree of affirmance of supreme court of State of Illinois, southern grand division, on appeal from circuit court of Marion county	477	293

	Original.	Print.
Record from circuit court of Marion county	480	295
Motion of defendant to vacate decree	480	295
Decree, February 14, 1881	482	295
Decree, February 12, 1883	483	296
Report of receiver	485	297
Decree, August 10, 1885	488	299
Decree dismissing bill	495	303
Order allowing appeal and fixing bond	496	304
Appeal bond	496	304
Clerk's certificate	498	305
Citation	500	306
Proof of service of citation	501	306

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Honorable Walter Q. Gresham, judge of the seventh judicial circuit, and the Hon. William J. Allen, district judge of said district, on Thursday, the seventh day of February, at the January term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and thirteenth year.

JAMES T. JONES, *Clerk.*

OZIAS TOWNSEND *vs.* ST. LOUIS & SANDOVAL COAL & MINING COMPANY, Sandoval Coal & Mining Company, Isaac Main, Lambert Noland, Frank Seymore, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, Executrix of Last Will of Francis H. Edwards, Deceased, and Lucinda N. Rockwell, Executrix of Last Will of C. N. Rockwell, Deceased.	In Chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and eighty-seven, came Ozias Townsend, the complainant, by James Carr, Esq., his solicitor, and filed in the clerk's office of the circuit court of the United States for the southern district of Illinois his bill of complaint against The St. Louis & Sandoval Coal & Mining Company, The Sandoval Coal & Mining Company, Isaac
2 Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of last will of C. N. Rockwell, deceased, defendants; which said bill of complaint is in the words and figures following, to wit:

In the Circuit Court of the United States for the Southern District of Illinois.

To the judges of the circuit court of the United States for the southern district of Illinois:

Ozias Townsend, of the city of St. Louis and a citizen of the State of Missouri, brings this his bill against The St. Louis and Sandoval Coal & Mining Company, a corporation of Sandoval and a citizen of the State of Illinois; The Sandoval Coal & Mining Company, a corporation of Sandoval and a citizen of the State of Illinois; Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of the last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of the last will of C. N. Rockwell, deceased, all of Marion county, in the State of Illinois, and citizens of the State of Illinois; and thereupon your orator complains and says that on the 12th day

of December, 1877, a corporation called the St. Louis and Sandoval Coal & Mining Company was duly organized under and pursuant to the statutes of the State of Illinois for the purpose of mining coal at or near the city of Sandoval, in the county of Marion, State of Illinois, and also for the purpose of selling and delivering the same when demanded. The capital stock of said corporation was fixed at $50,000, divided in 500 shares of $100 each. The location of the principal office of said corporation was in Sandoval, in the county of and State aforesaid. The duration of said corporation was to be ninety-nine years. The number of directors of said corporation was five, consisting of the following-named persons, viz.,

John B. Mears, Henry Wellhoener, Isaac Main, James Sheals,
3 and your orator, and your orator was chosen president, and the president was *ex officio* superintendant of the affairs and business of said corporation. The following persons subscribed for the number of shares of stock set opposite to their respective names and were the stockholders therein, viz:

Isaac Main, 10 shares		$1,000
Lambert Noland, 1 share		100
Jacob Lichty, 2 shares		200
C. N. Rockwell, 3 "		300
Andrew Roll, 2 "		200
Charles Reinhardt, 5 shares		500
Francis H. Edwards, 5 shares		500
Johnson A. Power, 2	"	200
Henry Wellhoener, 50	"	5,000
Albert E. Ross, 1	"	100
Mary A. McCabe, 10	"	1,000
Thomas B. Hill, 1	"	100
James Sheals, 10	"	1,000
James Collins, 5	"	500
John B. Mears, 2	"	200

And your orator nominally subscribed 393 shares, making in all ostensibly the sum of $50,000 subscribed to the capital stock of said corporation; that in and by an agreement by and between your orator and said subscribers to said capital stock he was to hold 380 shares of said capital stock simply as trustee for the use and benefit of said corporation, and as soon after the organization of said corporation as he could do so he was to sell and transfer said shares in said capital stock to such persons as he could and to pay the money received therefor into the treasury of said corporation for its use and benefit.

4 Your orator further shows that between the first day of July, 1877, and the first day of January, 1878, he spent all his time in taking and securing mining rights for said corporation and in the preliminary steps necessary to get said corporation organized under the statutes of the State of Illinois; that he took and secured 436 mining rights to himself as trustee for said corporation, for which and the legal fees for getting said corporation organized

he paid, laid out, and expended of his own money the sum of $2,700 in addition to the time and labor spent in securing said mining rights and the incorporation of said company; that by agreement between your orator and the parties who subscribed for and took stock in said corporation before your orator commenced to secure said mining rights and to take the preliminary steps to organize said corporation as aforesaid he was to be paid by said corporation, when organized, a fair and reasonable compensation for his time and services in doing so, and to have the money paid, laid out, and expended therefor refunded.

Your orator further shows that in addition to said mining rights which he had secured and taken as trustee for said corporation as aforesaid after the time of obtaining the incorporation of said St. Louis and Sandoval Coal & Mining Company he negotiated for and paid with his own money to Samuel Ewing the sum of $200 for the following-described tract of land, situate in the town of Sandoval, in Marion county, State of Illinois, viz, the south half of four acres on the north of the right of way of the O. & M. R. W. and adjoining Primmer's addition to the town of Sandoval and running N. as far as to Scott street, in said addition, and east far enough to contain 4 acres, with the exception of the streets to be continued through the said 4 acres, from said Primmer's addition eastward in the W. ½ N. E. ¼, section 17, T. 2, R. 1 E., and on the 9th day of January, 1878, he had the title in fee thereto conveyed to said corporation for the purpose of sinking a shaft thereon down to the vein of coal underlying said tract of land and to drift from said shaft under said tract of land to lands adjoining said tract of land and other lands upon which your orator had secured mining rights as aforesaid and in order to utilize said mining rights and make them valuable to said corporation.

Your orator further shows that after the incorporation and organization of corporation as aforesaid, to wit, on the 20th day of December, 1877, at a regular meeting of the board of directors of said corporation, held in the city of St. Louis, at No. 614 North 9th street, whereat all of said directors were present, on motion, the salary of your orator as president and *ex officio* superintendent of said corporation was fixed at $150.00 per month, said salary to commence on the 1st day of January, 1878, and the necessary expenses incurred by your orator while traveling on the business of said corporation were to be refunded to him, your orator not participating in the passage of said motion; and at said meeting a set of by-laws was adopted for the government of said board of directors, and your orator accepted the office of president and *ex officio* superintendent of said corporation, to which he had been chosen by said board of directors as aforesaid, and he at once entered upon and faithfully performed and discharged all the duties thereof from the time of his election to the 25th day of January, 1886, when the supreme court of the State of Illinois, held at Mt. Vernon, in said State, affirmed the final decree of the circuit court within and for the county of Marion, in said State, dissolving said corporation as hereinafter stated.

Your orator further shows that in and by the first section of the second article of said by-laws the powers and duties of president of said corporation are defined, and among them are the following, viz: "The president of this company shall until otherwise ordered be the *ex officio* superintendent of the affairs, business, and constructions engaged in; shall preside at all meetings of the board of directors, sign all documents and papers relating to the interests of the company where its seal is to be used; order special meetings of the board of directors at his option when required to do so in writing by any three directors; act as chairman of the executive committee, and generally perform the duties which executive officers of such company are required to do."

Your orator further shows that in and by the third section of the fourth article of the by-laws of said corporation it is provided as follows: "Three directors shall constitute a quorum to do the business of the company, and said board shall have power to make all needful rules and regulations for conducting the affairs of the company."

Your orator further shows that afterward, to wit, on the — day of ——, 1878, at a special meeting of the board of directors of said corporation, called by your orator as president at the written request of three directors, in pursuance of said last-mentioned by-law, said meeting being held at the office of the East St. Louis hotel, in the city of East St. Louis, in the State of Illinois, at five o'clock p. m. of said day, due and reasonable notice in writing to all of the directors of said corporation having been previously given of the time and place of holding said meeting and the purpose for which it was to be held, whereat all of said directors were present except said Isaac Main; that at said meeting James Sheals resigned as a director, and, in pursuance of one of the by-laws of said corporation, True W. Blackman was duly chosen a director thereof to fill the vacancy occasioned by the said resignation, and he thereupon accepted said office of director and took his seat as a member of the board of directors and participated in the proceedings of said meeting.

Your orator further shows that at said meeting he presented to said board of directors his account and claims for the sum of $12,940 for compensation for his services and for money paid, laid out, and expended as hereinbefore stated and asked to have the same
7 examined and audited by said board of directors, and then he retired from the board and did not participate in the deliberations on and consideration of said account and claim, so that it might be entirely free to take such action thereon as it might deem just and proper; thereupon Mr. Mears offered the following preamble and resolution, viz:

"Whereas Ozias Townsend has devoted a large share of his time and attention for the past year to the organization of the St. Louis & Sandoval Coal & Mining Company and has expended freely his money in traveling and promoting its interests and in securing for the said company large and very valuable franchises of coal and mining privileges; and

Whereas he has devoted his time from the inception of this enter-

prise and formal application for articles of association up to the 1st day of January, 1878, and for all of which no compensation has been rendered him; and

Whereas it is right and proper he should be paid for his labors in such behalf and should be fully reimbursed for the time and money so expended; now, therefore,

Be it resolved, first, That in full satisfaction for such services and expenditures and for his attention to the business of this company up to and prior to the 1st day of January, 1878, the said Ozias Townsend is hereby allowed and this company binds itself to pay to him the sum of ten thousand dollars, the same to be receipted for by him as in full compensation for said services as aforesaid; and if he shall wish to be endorsed upon the stock held by him as a member of this association as so much paid on account of calls made and to be made on such of the stock as may be held or indicated by him, and such endorsement by the secretary and treasurer of this company shall be held and accounted for as a receipt in full from him for calls on said stocks to the amount of ten thousand dollars as aforesaid.

Be it resolved, second, The secretary and treasurer is hereby
8 authorized and directed to endorse upon the stock held by said Townsend, as he shall indicate, payments of calls on the same to the extent aforesaid, and, in the event of such endorsement failing, then he shall have a valid claim against this com. to that extent for such services hereby acknowledged to be rendered, but not otherwise.

Be it resolved, 3rd, That the said Townsend be required to sign duplicate receipts for the reception of the amount endorsed on his stock as aforesaid, and that one, together with copy of this resolution attached, be retained in the main office at Sandoval, and one be retained on file by the secr'y, at the office at the city of St. Louis."

Which preamble and resolution, after said board of directors had carefully examined and fully investigated said account and claim, were unanimously adopted, and thereby said board of directors adjusted and settled said account and claim at ten thousand dollars and fully recognized the same as a just debt in favor of your orator against said organization for that sum; and your orator says that said sum is only a fair and reasonable compensation for the time and labor spent and the money paid, laid out, and expended as hereinbefore stated.

Your orator further shows that Frank Seymour, Isaac Main, Francis H. Edwards, Lambert Noland, Charles Rhinehardt, Jacob Lichty, and C. N. Rockwell, all of the county of Marion and State of Illinois, and Henry Wellhoener, of the city of St. Louis, State of Missouri, on the 27th day of June, 1878, filed their bill in chancery in the circuit court of Marion county, Illinois, against the St. Louis & Sandoval Coal & Mining Company, your orator, and others, wherein said plaintiff- alleged that the St. Louis & Sandoval Coal & Mining Company had been incorporated under the statutes of the State of Illinois, the names of the stockholders, the number of shares

of stock taken by each, the organization of the corporation under the certificate of incorporation, the election of your orator as president and superintendent of the corporation, as hereinbefore stated, and it was further alleged in said bill that on the 10th day
9 of January, 1878, said corporation had entered into contract with said Frank Seymour to sink a shaft on said tract of land hereinbefore described down to the vein of coal thereunder for said corporation, which he was to do on certain terms and for a certain price to be paid him by said corporation; that said Seymour, in pursuance of said contract, commenced sinking said shaft upon said tract of land, and he continued sinking it until about the 10th day of March, 1878, it being then down about 114 feet, when he stopped sinking said shaft on the ground that said corporation failed to perform its part of said contract; that said corporation was indebted to said Seymour on account of sinking said shaft about $1,700 and to other persons about $1,300, making a total indebtedness of about $3,000, without including said debt of $10,000, which had been audited by said board of directors in favor of your orator and allowed against said corporation as aforesaid; that the whole cost of sinking said shaft down to coal would be about $10,800; that on the 14th day of February, 1878, an assessment of five per cent. on said capital stock had been made, and the following were the only stockholders who paid assessments, viz., Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Rhinehardt, Francis H. Edwards, and Henry Wellhoener, the other stockholders failing to pay, and it is alleged that the stock held by the other stockholders, except that held by Mrs. McCabe, Dr. Ross, and Capt. Hill, was, on the 29th day of April, 1878, forfeited; and it was further alleged in said bill as follows: "Your petitioners further show unto your honors that some time between the 23rd day of March and the 6th day of April, A. D. 1878, the directors, except Isaac Main, of said company, by resolution, without any consideration and fraudulently, your petitioners charge, acknowledged an indebtedness of $10,000 to said Ozias Townsend for services claimes to be rendered and money expended for said company, which said services and money, your petitioners charge, said company
10 was not liable to him for, and which services he never rendered said company nor expended any money for said company which said company was liable to him for; and in said resolution, if he desired, said $10,000 should be endorsed upon the stock held by him as a member of said company; that afterwards said Ozias Townsend had issued to his wife, Elizabeth E. Townsend, $5,000 paid-up stock in said company upon said pretended indebtedness; $4,000 to one George W. Wharton, and $1,000 to True W. Blackman, making the said $10,000, for which the said Elizabeth E. Townsend, George W. Wharton, and True W. Blackman paid nothing to said company, and for which said amount the said Elizabeth E. Townsend, George W. Wharton, and True W. Blackman now pretend to own paid-up stock in said company to their said amounts, respectively."

It was further alleged that said mining rights were conveyed to

your orator in trust for said corporation, with a condition that the shaft should be sunk upon said tract of land within two years from the 6th day of November, 1877; otherwise they were to become forfeited; that said mining rights were worth considerable, provided said shaft was sunk down to the coal thereunder within the time limited as aforesaid, but that in the unfinished condition in which said shaft was when said bill was filed *and* mining rights and tract of land were not worth sufficient to pay off said indebtedness of said corporation; that said mining rights and tract of land, with the buildings thereon, were all the property or effects which said corporation had; and it was further alleged that the plaintiffs in said bill believed that the stockholders in said corporation whose stock had been declared forfeited as aforesaid were still liable for the debts thereof, notwithstanding the forfeiture of their stock. It is then alleged that nearly all of the stockholders in said corporation were insolvent, and in the condition of said corporation it would be useless for it to resume business or to attempt to
11 complete the enterprise for which it had been organized. The bill then prayed that the affairs of said corporation should be wound up, a receiver appointed, and its property sold and the proceeds applied to the payment of its said debts, and, if the same should be insufficient to pay said debts, then that the stockholders should be assessed to pay the balance, and that said corporation should be dissolved.

Your orator further shows that no summons was served upon your orator, either in his individual capacity or in his capacity as president of said corporation, and neither he nor said corporation appeared to said bill; that the summons issued in said case was served upon said Isaac Main as a director in said corporation, and the supreme court of the State of Illinois held said service illegal and the decree passed thereon void, as hereinafter stated; that at the August term, 1878, of said circuit court of Marion county, Illinois, a decree *pro confesso* was rendered against the defendants, the said bill and a final decree by default finding the facts alleged in said bill to be true and granting the relief prayed for, and in said decree George W. Herrod was appointed receiver of said corporation to take charge of all the property, credits, and effects of said corporation and sell the same at public or private sale, giving due notice of said sale, for cash, and to make conveyance of said property upon such sale. Said Herrod qualified under said appointment and took upon himself the duties of receiver of said corporation, and on the 28th day of September, 1878, he, at a pretended public sale, sold all of the property belonging to said corporation to said Isaac Main for the sum of $200, and he made and delivered to said Main a deed thereto properly acknowledged, and on the 11th day of February, 1879, said receiver reported said sale to said court, which, on the 11th day of February, 1879, confirmed said pretended sale.

Your orator avers that said property at the time of said pretended sale to said Isaac Main as aforesaid was worth the sum of $20,000.

12 Your orator further shows that afterwards, to wit, on the 24th day of March, 1881, an appeal was taken from said decree of the circuit court of Marion county, Illinois, to the supreme court of said State, at Mount Vernon, in said State, and on the 15th day of August, 1882, by the consideration and judgment of said supreme court, said decree of said circuit court was reversed on the ground that the service of the summons issued in said case upon said Isaac Main as a director in said corporation when he was one of the plaintiffs in said case was not a legal service of said summons upon said corporation, and that said circuit court had no jurisdiction over said corporation, and that the decree passed on said service was null and void, and said supreme court reman-ed said case to said circuit court for further proceedings therein according to law.

Your orator further shows that after said case had been remanded to said circuit court as aforesaid he and several others, defendants, filed their joint and several answers to the plaintiffs' said bill, and, after admitting certain allegations in said bill and denying others, they denied said allegation in the plaintiffs' bill, which as hereinbefore quoted, in regard to the services claimed to have been rendered for said company and money expended therefor, in the following words, viz: "They (said defendants) deny that the board of directors of said company wrongfully acknowledged an indebtedness to said Ozias Townsend, as set forth in the bill;" and in the separate answer of said St. Louis & Sandoval Coal & Mining Company, after admitting certain allegations in said bill to be true and denying other allegations, it referred to said allegations in plaintiffs' bill in the following language, viz: "This defendant denies that it fraudulently acknowledged and indebtedness to the said Ozias Townsend or issued paid-up stock to him without a sufficient consideration, or anybody else."

Your orator says that the said allegations are all and the only allegations in said bill and answers in regard to the indebted-
13 ness of said corporation to your orator.

Your orator further shows that said case was heard by said circuit court at the —— term, 1883, thereof upon said bill, answers, and replications thereto and evidence, and thereupon, on the 7th day of August, 1883, it found that said corporation had, on the 10th day of March, 1878, ceased to prosecute the work for which it was organized, leaving debts unpaid to said Frank Seymour and others (omitting your orator as a creditor, however) to the amount of $21,000; that the business of said corporation was mismanaged by its officers; that it was insolvent, and that it would be useless for said corporation to resume business on account of its financial embar-assment. It thereupon decreed that said corporation be dissolved, and that the appointment of said George W. Herrod as receiver at the August term, 1878, of said court (when said court had no jurisdiction over said corporation, as hereinbefore stated) "be, and the same was, confirmed, and he was ordered to make further report of his actings and doings herein as such receiver;" thereupon your orator and the other defendants prayed an appeal to the supreme court of

the State of Illinois, southern grand division thereof, which was granted, and the appeal duly taken.

Your orator further shows that at the February term, 1885, of said circuit court the plaintiffs in said bill filed a supplemental bill making The Sandoval Coal & Mining Company a party defendant in said case, and it appeared and filed an answer and cross-bill in said case at the same term of said court.

Your orator further shows that, in pursuance of his election as president and *ex officio* superintendent of said St. Louis & Sandoval Coal & Mining Company, he faithfully performed all the duties incumbent on him as such officer from the first day of January, 1878, until the affirmance by the supreme court of the State of Illinois on the 25th day of January, 1886, of said decree of the circuit court of Marion county, Illinois; that the board of directors of said corporation fixed his salary as president and *ex officio* superin-
14 tendent at $150.00 per month; that in addition to his salary said corporation agreed to refund to your orator his necessary traveling expenses while away from home on the business of said corporation, he all the time residing in the city of St. Louis, Missouri; that between the said 1st day of January, 1878, and the 27th day of March, 1878, he paid, laid out, and expended the sum of $510 for the use and benefit of said corporation; that in said amount is included the sum of $200 which your orator paid to Samuel Ewing on the 9th day of January, 1878, as the purchase-money for said tract of land upon which said shaft was sunk, as hereinbefore stated.

Your orator avers that said corporation has never paid him said debt of $10,000 or any part thereof, nor has it paid him his salary and expenses or any part thereof, nor has it refunded to him the said purchase-money paid to said Samuel Ewing for said tract of land as aforesaid or any part thereof, and said corporation still owes him therefor and the interest thereon from the time that said debts should have been paid.

Your orator further shows that immediately after the pretended sale of said property belonging to said corporation to said Isaac Main as aforesaid he and a portion of the plaintiffs in said case and several other persons, as your orator is informed and believes, united and organized under the statutes of the State of Illinois a new corporation, with its chief office at Sandoval, called the Sandoval Coal & Mining Company, to take said property off his hands and go on and complete the shaft which said old corporation had commenced sinking, as hereinbefore stated, and to drift from said shaft under the tract of land hereinbefore described to adjoining lands and the other lands conveyed to your orator in trust for said old corporation as aforesaid, and to utilize said tract of land, shaft, and mining rights for said new corporation in the same way that said old corporation intended to utilize them if it had not been interfered with by the bill filed by
15 said Isaac Main and other stockholders in said old corporation, as hereinbefore stated; that said new corporation took said property from said Isaac Main with full knowledge and notice of the debts and claims which your orator had against said old

corporation, as hereinbefore stated, and the liability of said property for the payment of your orator's said debt, and soon after said new corporation took said property it paid off the debt of said old corporation, amounting to the sum of $2,465.30, except said debt which it owed to your orator as aforesaid, and it proceeded to sink said unfinished shaft down to the coal underlying said tract of land, a distance of 603 feet, when it struck a vein of very rich and valuable bituminous coal about six feet thick, and it then drifted from said shaft under said tract of land to the coal underlying the adjoining lands and other lands to which your orator had obtained said mining rights as aforesaid, and it put up hoisting apparatus and made valuable improvements, so that the coal underlying said tract of land and the coal conveyed by said mining rights could be economically and efficiently mined, and commenced mining coal immediately after said shaft had been sunk down to said coal as aforesaid, and it has been successfully and profitably mining coal underlying said tract of land, and also the coal secured by said mining rights, ever since and selling the coal so mined, and it is so mining and selling coal and realizing a large income and profit therefrom.

Your orator further shows that said Sandoval Coal & Mining Company in substance alleged in its said cross-bill that it had in good faith bought said property from said Isaac Main and paid all of the debts of the said St. Louis & Sandoval Coal & Mining Company, amounting to the sum of $2,465.30, your orator's said debts not being embraced therein; that it has made valuable improvements on and under said tract of land and other tracts of land upon which mining rights had been secured by your orator as
16 aforesaid to the amount of $25,000; that the plaintiffs in the said case against said old corporation and others were the only legal stockholders therein; that your orator and other individual defendants in said case were not *bona fide* stockholders in said old corporation and had no rights as stockholders therein, and it prayed the court to so decree, and that the plaintiffs in said case were the only valid and legal stockholders in said old corporation and who had any right to dispose of its property; that said plaintiffs be ordered to convey in the name of said old corporation by a valid conveyance said tract of land on which said shaft was sunk, and also said mining rights secured by your orator for the use and benefit of said old corporation as aforesaid by a day to be fixed by the court, and in default of such conveyance by such parties that a master in chancery of said court execute and deliver a deed of conveyance and deliver the same to said Sandoval Coal & Mining Company; that said St. Louis & Sandoval Coal & Mining Company be restrained from prosecuting an ejectment suit against said new corporation in said court to receive said property; also from prosecuting an action of trespass against James S. Martin and others, officers and agents of said new corporation, for trespassing on said property; also that said original suit against said new corporation be dismissed. Answer was filed to said cross-bill by your orator, said old corporation, and other defendants at the February term,

1885, of said court and a replication to said answer was filed at the same term; and at the August term, 1885, of said court said case came on for hearing on said original and supplemental bills and answers thereto and replication, and on said cross-bill and the answers thereto, and replication and the evidence in the case, and on the 25th day of August, 1885, said court passed a final decree, in which it granted the relief to said new corporation which it had prayed for; thereupon your orator and said old corporation and other defendants to said original and cross bills prayed an appeal to the supreme court of the State of Illinois, southern grand
17 division thereof, which was granted, and an appeal duly taken to said supreme court, and on the 25th day of January, 1886, by the consideration and judgment of said supreme court, said decree of said circuit court was in all things affirmed.

Your orator avers that the point whether said St. Louis and Sandoval Coal and Mining Company was liable to your orator for his time and labor spent and money paid, laid out, and expended in procuring said mining rights to himself as trustee for said corporation before the organization thereof, which would have enured to the benefit of said corporation if it had not been dissolved through the interference of said Isaac Main and others, as hereinbefore stated, and also the services and legal fees paid by him in getting said corporation incorporated, as hereinbefore stated, and also his salary as president and *ex officio* superintendent of said corporation from the first day of January, 1878, until the affirmance by the supreme court of said State, on the 25th day of January, 1886, of said final decree dissolving said corporation as aforesaid, and his traveling expenses while away from home on the business of said corporation, and also the $200 purchase-money paid to said Samuel Ewing for said tract of land upon which said shaft was sunk, as hereinbefore stated, was not in issue in said cases or either of them and was not determined or adjudicated in said cases or either of them, and your orator is not estopped by the decrees passed in said cases or either of them from setting up, asserting, and claiming his right thereto as a creditor of said corporation.

Your orator further shows that he was in good faith doing all he reasonably could to sell said 380 shares in said capital stock which he held as trustee for said corporation as aforesaid and he had actually sold 170 shares thereof to two or more purchasers, and he would have in good faith turned into the treasury of said corporation the proceeds of such sale if he had not been interfered with by said bill filed by said Isaac Main and other stockholders, as
18 hereinbefore stated.

Your orator further shows that no money was paid by the subscribers to the capital stock of said corporation, except the following persons, who each paid only five per cent. on the shares respectively subscribed by them, viz., Isaac Main, Lambert Noland, Frank Seymore, Charles Rhinehardt, Jacob Lichty, Francis H. Edwards, and C. N. Rockwell; that said Isaac Main still owes the sum of $950.00 on his subscription to the capital stock of said corporation, as hereinbefore stated; Lambert Noland, the sum of $95.00

on his subscription to said capital stock; Frank Seymore, the sum of $200.00 on his subscription to said capital stock; Charles Rhinehardt, the sum of $495.00 on his subscription to said capital stock; Jacob Lichty, the sum of $190.00 on his subscription to said capital stock; that the estate of Francis H. Edwards, deceased, still owes the sum of $475.00 on the subscription made by said Francis H. Edwards to said capital stock, as hereinbefore stated; that said Francis H. Edwards died since the commencement of said suit, first having duly made and published his last will and testament, wherein he appointed Margaret E. Edwards the executrix thereof, which will was duly admitted to probate in the county court of Marion county, Illinois, in the year 1883, and thereupon said Margaret E. Edwards qualified as the executrix of said last will and testament and took upon herself the execution thereof, and she is still acting as such executrix, her administration of said will not being closed yet; that the estate of C. N. Rockwell, deceased, still owes the sum of $285.00 on the subscription made by said C. N. Rockwell to said capital stock, as hereinbefore stated; that said C. N. Rockwell died since the commencement of said suit, first having duly made and published his last will and testament, wherein he appointed Lucinda N. Rockwell the executrix thereof, which will was duly admitted to probate in the county court of Marion county, Illinois, in the year 1880, and thereupon said Lucinda N. Rockwell qualified as the executrix of said last will and testament and took upon herself the execution thereof, and she is still acting as
19 such executrix, her administration of said will not being closed yet.

Your orator avers that said St. Louis and Sandoval Coal and Mining Company has no property or assets of any kind, and it had none at the time of its dissolution, as hereinbefore stated, except the unpaid balance on said subscription to its capital stock, as hereinbefore stated, and the equitable right of your orator as a creditor of said corporation to follow said property, which was pretendingly sold by said George W. Herrod as receiver to said Sandoval Coal and Mining Company, as hereinbefore stated, and that it would be fruitless to first sue upon his said debts and recover a judgment at law against said St. Louis and Sandoval Coal and Mining Company, and then have an execution issued on said judgment and returned no property of said corporation could be found whereon said execution could be levied, before filing this bill.

Your orator further avers that said unpaid capital stock and said unpaid balance on said capital stock, and also said property pretendingly sold by said George W. Herrod as receiver to said Sandoval Coal and Mining Company, were and are a trust fund for the payment of your orator's said debts against said St. Louis and Sandoval Coal and Mining Company, and that said sale to said Sandoval Coal and Mining Company by said George W. Herrod as receiver as aforesaid was and is null and void, and it took said property with full notice and knowledge that your orator had a just and equitable claim thereon as a creditor of St. Louis and Sandoval Coal and Mining Company for the payment of his said debts against said

corporation, and it has ever since held and still holds said property in trust for the payment of your orator's said debts.

Your orator further avers that the $2,465.30 which said Sandoval Coal and Mining Company paid or claims to have paid to the other creditors of the St. Louis and Sandoval Coal and Mining Company for said property is not more than one-eighth the actual
20 value of said property at the time the same was taken possession of by said Sandoval Coal and Mining Company, and that it would be a fraud and greatly unjust, inequitable, and oppressive upon your orator as a creditor of said St. Louis and Sandoval Coal and Mining Company to allow said Sandoval Coal and Mining Company to retain said property and reap the fruits, as it has been ever since it took possession and still is, of the labors done and money spent by your orator in procuring said mining rights, organizing said St. Louis and Sandoval Coal and Mining Company into a corporation, and paying the purchase-money for said tract of land upon which said shaft has been sunk, as hereinbefore stated, without paying your orator's said debts.

Your orator further shows that all the subscribers to the capital stock of said St. Louis & Sandoval Coal & Mining Company, except those who are made defendants to this bill, have been ever since they respectively subscribed and they still are residents of the city of St. Louis and citizens of the State of Missouri and are out of the jurisdiction of this court, or your orator would make them parties defendant to this bill.

Your orator further avers that he is the only creditor of said St. Louis and Sandoval Coal & Mining Company remaining unpaid.

Your orator had well hoped that said individual defendants, as well as said defendant, The Sandoval Coal & Mining Company, would have acknowledged and recognized the justice and equity of your orator's said debts against the St. Louis and Sandoval Coal & Mining Company and have paid the same; but now so it is, may it please your honor, that all of said defendants deny the justice and equity of said debts and claim and pretend that said St. Louis and Sandoval Coal and Mining Company does not owe and never did owe said debts or any of them, and they furthermore claim and pretend that when said decree was passed dissolving said St. Louis
21 and Sandoval Coal & Mining Company, as hereinbefore stated, that your orator's said debts against said St. Louis and Sandoval Coal and Mining Company were determined, decided, and adjudicated against your orator, and that said decree is a final adjudication and settlement of your orator's said debts, and they refuse to pay said debts or any of them or any part thereof, whereas your orator charges the contrary thereof to be the truth, and that your orator's said debts are just, honest, and equitable debts against said St. Louis and Sandoval Coal & Mining Company, and they have never been paid nor any part thereof has ever been paid, and said corporation still owes and is indebted to your orator therefor and the interest thereon since the time when they should have been paid, as hereinbefore stated.

All which actings and doings and pretenses of the said defend-

ants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator as a creditor of said St. Louis and Sandoval Coal and Mining Company in the premises; and your orator is ready and willing and he hereby offers to contribute his proportionate part towards the payment of his said debts if the court shall be of opinion and hold that he was a stockholder in the capital stock of said St. Louis and Sandoval Coal & Mining Company to the extent hereinbefore stated; in consideration whereof and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable—

To the end, therefor-, that the said defendants to this bill may be required to make full, true, direct, and perfect answer to the charges in the same, but not under oath, the answer under oath being hereby waived, and upon the hearing of this case that this honorable court will pass a decree requiring said individual defendants
22 as subscribers to and holders in the capital stock, of said St. Louis and Sandoval Coal & Mining Company to pay the unpaid balance on their respective shares in said capital stock as hereinbefore stated, and that it will declare said pretended sale by said George W. Hered as receiver of said St. Louis and Sandoval Coal & Mining Company to said Isaac Main and by said Main to said Sandoval Coal and Mining Company null and void and said Sandoval Coal and Mining Company a trustee of said property for the payment of your orator's said debts, and if said Sandoval Coal & Mining Company shall fail or refuse to pay your orator's said debts or such proportion thereof as may be adjudged against it to pay, by a day to be fixed by the decree of this honorable court, that then said property or so much thereof as may be necessary to pay said debts shall be put up and sold to the highest bidder for cash and the proceeds of such sale applied to the payment of said debts, and that your orator may have such further and other relief in the premises as the nature of his case shall require and to your honors shall seem meet.

May it please your honors to grant unto your orator a writ of subpœna to be directed to said St. Louis and Sandoval Coal & Mining Company, the Sandoval Coal & Mining Company, Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of the last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of the last will of C. N. Rockwell, deceased, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court, and then and there full, true, direct, and — singular the premises, and, further, to stand to, perform, and abide such further order, direction, and decree therein as this honorable court shall deem most meet.

JAMES CARR,
Solicitor for Complainant.

23 JAMES CARR AND
R. S. McDONALD, *Of Counsel.*

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

This day personally appeared before the undersigned, a United States commissioner within and for the eastern judicial district of Missouri, Ozias Townsend, who, being duly sworn by me, deposes and says that he has read and understands the foregoing bill; that the facts and matters therein, as stated, are true of his own knowledge except those facts and matters which are stated on information and belief, and as to them he believes them to be true.

OZIAS TOWNSEND.

Subscribed and sworn to before me this 29th day of November, A. D. 1887.

HANNIBAL LOEVY,
Commissioner U. S. Circuit Court,
Eastern District of Missouri.

Then, afterwards, to wit, on said thirtieth day of November of the year last aforesaid a writ of subpœna was issued in said entitled cause; which said writ of subpœna, with the return of the marshal thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

24 The United States of America to the St. Louis and Sandoval Coal and Mining Company, the Sandoval Coal and Mining Company, Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of the last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of the last will of C. N. Rockwell, deceased, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of January next, to answer the bill of complaint of Ozias Townsend, this day filed in the clerk's office of said court, in said city of Springfield, the- and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this thirtieth day of November, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and twelfth year.

[L. S.] JAMES T. JONES, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the

above writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

JAMES T. JONES, *Clerk.*

I have served the within writ upon the persons therein named in the following manner, to wit, upon Isaac Main on the 5th day
25 of December, A. D. 1887; also upon Lambert Noland on the 1st day of December, A. D. 1887; also upon Frank Seymour on the 3rd day of December, A. D. 1887; also upon Charles Reinhardt on the 1st day of December, A. D. 1887; also upon Margaret E. Edwards, executrix of the last will of Francis H. Edwards, deceased, on the 1st day of December, A. D. 1887; also upon Lucinda N. Rockwell, executrix of the last will of C. N. Rockwell, deceased, on the 1st day of December, A. D. 1887; also upon Isaac Main, director of the St. Louis & Sandoval Coal & Mining Company, on the 5th day of December, A. D. 1887; also upon James S. Martin, president of the Sandoval Coal & Mining Company, on the 1st day of December, A. D. 1887; also upon James D. Hensley, superintendent of the Sandoval Coal & Mining Company, on the 1st day of December, A. D, 1887; by also personally delivering each of them a copy of the same on the aforesaid days. I have also served the same on the following-named defendant, not having been able to find him to serve personally, by leaving a true copy thereof for him, at his usual place of abode, with persons above the age of ten years and member of his respective family and to whom the contents were made known by me, to wit, upon Jacob Lichty on the 1st day of December, A. D. 1887, with A. M. Lichty, his wife.

H. G. WEBER, *U. S. Marshal,*
By JOHN SCHNIEDER, *Deputy.*

(Indorsed:) Filed December 9, A. D. 1887. James T. Jones, clerk.

Then, afterwards, to wit, on the second day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-eight, the following proceedings were had in said court in said cause and entered of record, to wit:

26 OZIAS TOWNSEND
vs.
THE ST. LOUIS AND SANDOVAL COAL & MINING COMPANY *et al.* } In Chancery.

This day come the defendants, The St. Louis and Sandoval Coal & Mining Company, Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of the last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of the last will of C. N. Rockwell, deceased, by M. Schaeffer, Esq., their solicitor, and entered their appearance herein.

Afterwards, to wit, on said second day of January, of the year last aforesaid, came again the defendants, by M. Schaeffer, Esq., their solicitor, and filed in the clerk's office of said court their

demurrer to the bill of complaint herein; which said demurrer is in the words and figures following, to wit:

Circuit Court of the United States for the Southern District of Illinois.

OZIAS TOWNSEND *vs.* THE ST. LOUIS AND SANDOVAL COAL & MINING COMPANY *et al.*	Bill in Chancery.

The joint and several demurrer of the Sandoval Coal and Mining Company, Charles Reinhardt, Lambert Noland, Isaac Main, Margaret E. Edwards, Lucinda N. Rockwell, and Jacob Lichty and Frank Seymour, defendants to the bill of complaint of Ozias Townsend, the complainant.

These defendants, by protestation, nor confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in such manner and form as the same
27 are therein and thereby set forth and alleged, demur to said bill and for causes of demurrer show:

1st. The complainant has not in and by his said bill made or stated such a case as entitles him in a court of equity to any discovery or relief from or against these defendants or any or either of them, touching the matters or any of them contained in his said bill.

2nd. The complainant in his bill shows that he did not *set* in good faith nor in conformity with law in the organization of the company for which he claims to have expended money and performed services. The bill shows that the services for which he asks pay were in violation of law and fraudulent.

3rd. The def't The Sandoval Coal & Mining Company says that it appears from the complainant's bill that there is no privity between the complainant and this defendant to authorize the complainant to call upon this defendant for pay for services, &c.

4th. The major part of complainant's pretended claim is for services under a void contract, professedly made at an unauthorized meeting in another State, whose acts were not ratified as required by law.

5th. The other part of complainant's pretended claim is for $10,000, voted to him by a part of the directors for alleged services, &c., at a meeting in East St. Louis, Ill., on the — day of ——, 1878, to be credited on his stock, when he claims in the first part of his bill that he had no stock, except as trustee of said old company. This double dealing does not show clean hands.

6th. The complainant's bill shows that complainant's pretended claim- were in issue in the suit in the circuit court of Marion county, Ill., the bill alleging that they were fraudulent, &c., and the answer denying that allegation, and that the court found the bill to be true.

28 7th. The bill, in its statement of the litigation in the cir. court of Marion Co., Ills., between complainant *et al.* and The Sandoval Coal and Mining Company on its cross-bill, contradicts its statement in the bill to the effect that def't The Sandoval Coal & Mining Co.'s title to said property is fraudulent, and that it holds such title in trust for creditors of said old company.

8th. The bill nowhere avers or shows that the def't The Sandoval Coal and Mining Company ever promised or agreed to pay to the complainant anything.

9th. The bill contradicts itself by aver-ing that the St. Louis and Sandoval Coal & Mining Company had no property, and then alleging that it had large claims for unpaid stock against defendants and others.

10th. The bill shows that the St. Louis and Sandoval Coal & Mining Company was legally dissolved by order of court in A. D. 1883, so that it is dead for all purposes, and no claims could be prosecuted against it after August, 1885, in section 10, chapter 32, Rev. Stat. of Illinois.

Wherefore, and for divers other good causes of demurrer appear-ing in the said bill of complaint, these defendants demur to the said bill and to all the part- thereof, and pray the judgment of this hon. court whether they or either of them should be compelled to make any further or other answer to the said bill of complaint, and they pray and each of them prays to be dismissed with their re-spective and reasonable costs in this behalf sustained.

M. SCHAEFFER.
Solicitor for the Sandoval Coal & Mining Co.
CHARLES REINHARDT.
LAMBERT NOLAND.
ISAAC MAIN.
29 MARGARET E. EDWARDS,
Executrix, &c.
LUCINDA N. ROCKWELL,
Executrix, &c.
JACOB LICHTY.
FRANK SEYMOUR.

M. Schaeffer, att'y and solicitor for the above-named def'ts, being duly sworn, on oath says that this demurrer is not filed for delay, and he also certifies that, in his opinion, it is well founded in point of law.

M. SCHAEFFER.

Subscribed and sworn to before me by M. Schaeffer January 2, 1888.

JAMES T. JONES, *Clerk.*

Then, afterwards, to wit, on the twenty-fourth day of April, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-eight, the following further proceedings were had in said court in said cause and entered of record, to wit:

OZIAS TOWNSEND
vs.
ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et al.* } In Chancery.

And now, on this day, the court having heretofore heard the arguments of counsel to the demurrer of defendants to the bill of complaint herein, and having duly considered the same and being sufficiently advised of and concerning the premises, doth order, adjudge, and decree that said demurrer to said bill be, and the same is hereby, sustained, with leave to complainant to amend his said bill, if he shall desire so to do, within thirty days from this date.

Afterwards, to wit, on the sixth day of June of the year last aforesaid, came again the defendants, by their solicitor, and filed in the clerk's office of said court their motion to dismiss this cause;
30 which said motion is in the words and figures following, to wit:

OZIAS TOWNSEND
vs.
ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et al.* } In Chancery.

And now come the defendants, by M. Schaeffer, their solicitor, and move the court to dismiss this cause at the cost of the complainant, as the bill herein was not amended according to the rule of this court rendered April 24th, 1888.

M. SCHAEFFER, *For Def'ts.*

(Indorsed:) Filed June 6, 1888. James T. Jones, clerk.

And afterwards, to wit, on the fourteenth day of August, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

OZIAS TOWNSEND
vs.
ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et al.* } In Chancery.

On motion of complainant, by James Carr, Esq., his solicitor, leave is granted complainant to file amended bill herein, with rule on defendant to answer said amended bill by the first Monday of September next.

Then, afterwards, to wit, on said fourteenth day of August
31 of the year last aforesaid, came again the complainant, by James Carr, Esq., his solicitor, and filed in the clerk's office of said court his amended bill herein in the words and figures following, to wit:

In the Circuit Court of the United States for the Southern District of Illinois.

To the judges of the circuit court of the United States for the southern district of Illinois:

Ozias Townsend, of the city of St. Louis and a citizen of the State of Missouri, by leave of the court first had and obtained, brings

this his amended bill against The St. Louis and Sandoval Coal & Mining Company, a corporation of Sandoval and a citizen of the State of Illinois; Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of the last will and testament of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of the last will and testament of C. N. Brockwell, deceased, all of Marion county, in the State of Illinois, and *a* citizen- of the State of Illinois.

And thereupon your orator complains and says that on the 12th day of December, 1877, a corporation called the St. Louis and Sandoval Coal & Mining Company was duly and legally organized and incorporated under and pursuant to the statutes of the State of Illinois for the purpose of mining coal at or near the town of Sandoval, in the county of Marion and State of Illinois, and also for the purpose of selling and delivering the same when demanded. The capital stock of said corporation was fixed at $50,000, divided into 500 shares of $100 each. The principal office of said corporation was located in said town of Sandoval, in the county and State aforesaid. The duration of said corporation was to be ninety-nine years. The number of directors of said corporation was five, consisting of Isaac Main, John B. Mears, Henry Wellhoeuer, James Sheals, and your orator, and your orator was chosen presi-
32 dent, and the president was *ex officio* superintendent of the affairs and business of said corporation. The following persons subscribed for the number of shares of stock set opposite to their respective names and were the stockholders in said corporation at its organization as aforesaid, and they continued to be the stockholders herein until the dissolution of said corporation as hereinafter stated, viz:

Isaac Main, 10 shares	$1,000
Lambert Noland, 1 share	100
Jacob Lichty, 2 shares	200
C. N. Rockwell, 3 "	300
Andrew Roll, 2 "	200
Charles Reinhardt, 5 shares	500
Francis H. Edwards, 5 shares	500
Johnson A. Power, 2 "	200
Henry Wellhoeuer, 50 "	5,000
Albert Ross, 1 "	100
Mary McCabe, 10 "	1,000
Thomas B. Hill, 1 "	100
James Sheals, 10 "	1,000
James Collins, 5 "	500
John B. Mears, 2 "	200

And your orator subscribed 391 shares, making in all the sum of $50,000 subscribed to the capital stock of said corporation; that in and by an agreement by and between your orator and said subscribers to said capital stock when he subscribed thereto he was to hold 380 of the shares subscribed by him as trustee for the use and benefit of said corporation, and as soon after the organization of said corpora-

tion as he could find purchasers he was to sell and transfer said shares to the purchasers thereof and to pay the money received therefor into the treasury of said corporation for its use and benefit.

33 Your orator further shows that between the first day of July, 1877, and the first day of January, 1878, he spent all his time in taking and securing mining rights for said corporation and in the preliminary steps necessary to get said corporation duly and legally organized under the laws of the State of Illinois; that he took and secured during said time 436 mining rights to himself as trustee for said corporation, for which and the legal fees for getting said corporation duly and legally organized as aforesaid he paid out and expended of his own money the sum of $200.00 in addition to the time and labor spent by him in securing said mining rights and the incorporation of said company; that by agreement between your orator and the parties who subscribed for and took — in said corporation before your orator commenced to secure said mining rights and to take the preliminary steps to organize said corporation as aforesaid he was to be paid by said corporation, when organized, a fair and reasonable compensation for his time and service in doing so, and to have the money paid, laid out, and expended therefor refunded to him.

Your orator further shows that immediately after the organization of said corporation he negotiated for and paid with his own money to Samuel Ewing the sum of $200 for the following-described tract of land, situate in the town of Sandoval, in the county of Marion and State of Illinois, viz:

The south half of four acres on the north of the right of way of the O. & M. R'y and adjoining Primmer's addition to the town of Sandoval and running north as far as Scott street, in said addition, and east far enough to contain 4 acres, with the exception of the streets to be continued through the said 4 acres, from said Primmer's addition eastward in the W. ½ N. E. ¼, section 17, T. 21, R. 1 E.

And on the 9th day of January, 1878, he had the title in fee thereto conveyed to said corporation for the purpose of sink-

34 ing said shaft thereon down to the vein of coal underlying said tract of land and to drift from said shaft under said tract of land to lands adjoining said tract and other lands adjacent to said tract and tracts adjoining it upon which your orator had secured mining rights as aforesaid in order to utilize said mining rights and make them valuable to said corporation.

Your orator further shows that after the incorporation and organization of said corporation as aforesaid, to wit, on the 20th day of December, 1877, at a regular meeting of the board of directors of said corporation, held in the city of St. Louis, at 614 North Ninth street, whereat all of the directors of said corporation were present, on motion of —, the salary of your orator as president and *ex officio* superintendent of said corporation was fixed at $150 a month, said salary to commence on the first day of January, 1878, and the necessary expenses incurred by your orator while traveling on the business of said corporation were to be refunded to him, your orator

nor participating in the adoption of said motion; and at said meeting a set of by-laws was adopted for the government of said board of directors, and your orator accepted the office of president and *ex officio* superintendent of said corporation, to which he had been chosen by said board of directors as aforesaid, and he at once entered upon and faithfully performed and discharged all the duties thereof from the time of his election to the 25th day of January, 1886, when the supreme court of Illinois, held at Mount Vernon, in said State, affirmed the final decree of the circuit court within and for the county of Marion, in said State, dissolving said corporation, as hereinafter stated.

Your orator further shows that in and by the first section of the second article of said by-laws the powers and duties of president of said corporation are defined, and among them are the following, viz:

35 "The president of this company shall until otherwise ordered be the *ex officio* superintendent of the affairs, business, and constructions engaged in; shall preside at all meetings of the board of directors; sign all documents and papers relating to the interests of the company where its seal is to be used; order special meetings of the board of directors at his option, or when required so to do in writing by any three directors; act as chairman of the executive committee, and generally perform the duties which executive officers of such companies are required to do."

Your orator further shows that in and by the third section of the fourth article of said by-laws it is provided as follows:

"Three directors shall constitute a quorum to do the business of the company, and said board shall have power to make all needful rules and regulations for conducting the affairs of the company."

Your orator further shows that the fourth section of the fourth article of the by-laws of said corporation is as follows:

"Special meetings of the board of directors may be called by the president at St. Louis, or at such other place as may be deemed expedient for the better transaction of business in hand, and all meetings, when signed and ratified by a majority of the board, shall be as binding as though held at their regular place of meeting in the State of Illinois."

Your orator further shows that it was deemed expedient by a majority of the board of directors of said corporation to have a special meeting thereof held at the office of the East St. Louis hotel, in the city of East St. Louis, in the State of Illinois; that under and by authority of said last-mentioned by-law, he, as president of said corporation, called, at the written request of three of said directors, a special meeting of the board of directors of said corporation to be held at the East St. Louis hotel, in the city of East St. Louis,

36 in the State of Illinois, at five o'clock p. m. on the — day of March, 1878; that due and reasonable notice in writing of the time and place of holding said meeting was given by your orator as president to all of said directors, and that the purpose for which it was to be held, among other things, was to examine, pass upon, and

audit the account and claim which your orator had against said corporation for taking and securing said mining rights for it and the money paid, laid out, and expended in getting said corporation organized under the laws of the State of Illinois as aforesaid; that in pursuance of said call a special meeting of said board of directors was held at the time and place specified in said call, whereat all of the directors of said corporation were present except Isaac Main; that at said meeting James Sheals tendered his resignation as director, which was accepted, and, in pursuance of one of the by-laws of said corporation, True N. Blackman was duly chosen a director then to fill the vacancy occasioned by the resignation of James Sheals as aforesaid, and said Blackman thereupon accepted said office of director and took his seat as a member of the board of directors and participated in the proceedings of said meeting.

Your orator further shows that at said meeting he presented to said board of directors his account and claim for the sum of $12,050 for compensation for his services and for money paid, laid out, and expended as hereinbefore stated and asked to have the same examined, passed upon, and audited by said board of directors, and then he retired from the board and did not participate in the deliberations on and consideration of said account and claim, so that it might be entirely free to take such action thereon as it might deem just and proper; thereupon Mr. Mears, one of the directors, offered the following preamble and resolution, viz:

"Whereas Ozias Townsend has devoted a large share of his time and attention for the past year to the organization of the St.
37 Louis and Sandoval Coal & Mining Company and has expended freely his money in traveling and promoting its interests and securing for the said company large and very valuable franchises of coal and mining privileges; and

Whereas he has devoted his time from inception of this enterprise and formal application for articles of association up to the 1st day of January, 1878, and for all of which no compensation has been rendered him; and

Whereas it is right and proper he should be paid for his labor in such behalf and should be fully reimbursed for the time and money so expended: now, therefore,

Be it resolved, 1st, That in full satisfaction for such services and expenditures and for his attention to the business of this company up to and prior to the 1st day of January, 1878, the said Ozias Townsend is hereby allowed and this company binds itself to pay to him the sum of ten thousand dollars, the same to be receipted for by him as in full compensation for said services as aforesaid; and if he shall wish to be endorsed upon the stock held by him as a member of the association as so much paid on account of calls made and to be made on such of the stock as may be held or indicated by him, and such endorsement by the secretary and treasury of this company shall be held and accounted for as a receipt in full from him for calls on said stocks to the amount of ten thousand dollars as aforesaid.

Be it resolved, 2nd, The secretary and treasurer is hereby

authorized and directed to endorse upon the stock held by said Townsend, as he shall indicate, payments of calls on the same to the extent aforesaid, and, in the event of such endorsement failing, then he shall have a valid claim against this company to that extent for such services hereby acknowledged to be rendered, but not otherwise.

Be it resolved, 3rd, That the said Townsend be required to sign duplicate receipts for the reception of the amount endorsed on his stock as aforesaid, and that one, together with copy of these resolutions attached, be retained in the main office at Sandoval, and
38 one to be retained on file by the sec'y, at the office at the city of St. Louis."

Which preamble and resolution, after said board of directors had carefully examined and fully investigated said account and claim, were unanimously adopted, and thereby said board of directors adjusted and settled said amount and claim at $10,000 and fully recognized the same as a just debt in favor of your orator against said corporation for that sum; and your orator says that he acquies-ed in and accepted said settlement, and as evidence that the action of said board of directors in auditing and allowing said account and claim was done in good faith, and the deliberate action of said board, each and every member who was present at said meeting being a majority of all the members of said board of directors, in conformity with the 4th section of the 4th article of said by-laws, signed and ratified said allowance and auditing of said account and claim; and your orator avers that said allowance and audit was legal, proper, and just between him and said corporation.

And your orator says that said sum is only a fair and reasonable compensation for the time and labor spent and the money paid, laid out, and expended as hereinbefore stated.

Your orator further shows that the defendant Main, intending to cheat, wrong, defraud, and prevent your orator from collecting said claim which has been audited and allowed by said board of directors in his favor against said corporation as aforesaid, and also to prevent your orator from collecting his salary and traveling expenses, as herein stated, combined and confederated with the other stockholders in said corporation residing in Marion county, Illinois, to wreck said corporation by the forms of law and process of the courts and buy in all its assets at a sum very greatly below their real value, so that said assets ostensibly would all be gone when your orator took legal steps to collect his said claim against
39 said corporation; and with this end in view and for this purpose, on the 27th day of June, 1878, he (said Isaac Main), Frank Seymour, Francis H. Edwards, Lambert Noland, Charles Reinhardt, Jacob Lichty, and C. N. Rockwell, of the county of Marion and State of Illinois, and Henry Wellhoeuer, of the city of St. Louis (but said Wellhoeuer, after ascertaining the animus of the suit, voluntarily withdrew therefrom), filed their bill in chancery in the circuit court of Marion county, Illinois, against the St. Louis and Sandoval Coal and Mining Company, your orator, and all the

other subscribers to the capital stock of said company who resided out of the State of Illinois; all of said subscribers, including your orator, resided in the city of St. Louis, in the State of Missouri, and out of the jurisdiction of said court, and in said bill they alleged the incorporation and organization of said St. Louis and Sandoval Coal & Mining Company, as hereinbefore alleged, setting out the amount of the capital stock, the names of the subscribers thereto, the number of shares, the amount of a share, and the number of shares subscribed by each, and it was further alleged in said bill that on the 10th day of January, 1878, said corporation had entered into a contract with said Frank Seymour to sink a shaft on said tract of land hereinbefore described down to the vein of coal thereunder for said corporation, which he was to do on certain terms and for a certain price to be paid by said corporation; that said Seymour, in pursuance of said contract, commenced sinking said shaft upon said tract of land, and he continued sinking it until about the 10th day of March, 1878, it being then down about 114 feet, when he stopped sinking said shaft on the ground that said corporation failed to perform its part of said contract; that said corporation was indebted to said Seymour on account of sinking said shaft about $1,700 and to other persons about $1,300, making a total indebtedness of about $3,000, without including said debts of $10,000, which had been audited by said board of directors in favor of your orator and allowed against said corporation as aforesaid; that the whole cost of sinking said shaft down to coal would be about $10,800; that on the 14th day of February, 1878, an assessment of 5 % on said capital stock had been made, and the following were the only stockholders who paid said assessment, viz., Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Reinhardt, Francis H. Edwards, and Henry Wellhoeuer, the other stockholders failing to pay, and it alleged that the stock held by the other stockholders, except that held by Mrs. McCabe, Dr. Ross, and Capt. Hill, was, on the 29th day of April, 1878, forfeited; and it was further alleged as follows: "Your petitioners further shows unto your honors that some time between the 23rd day of March and the 6th day of April, A. D. —, the directors, except Isaac Main, of said company, by resolution, without any consideration and fraudulently, your petitioners charge, acknowledged an indebtedness of $10,000 to said Ozias Townsend for services claimed to be rendered and money expended for said company, which said services and money, your petitioners charge, said company was not liable to him for, and which services he never rendered said company nor expended money for said company which said company was liable to him for; and in said resolutions, if he desired, said $10,000 should be endorsed upon the stock held by him as a member of said company; that afterwards said Ozias Townsend had issued to his wife, Elizabeth E. Townsend, $5,000 paid-up stock in said company upon said pretended indebtedness; $4,000 to one George W. Wharton, and $1,000 to True W. Blackman, making the said $10,000, for which the said Elizabeth E. Townsend, George W. Wharton, and True W. Blackman paid

nothing to said company, and for which said amount the said Elizabeth E. Townsend, George W. Wharton, and True W. Blackman now pretend to own paid-up stock in said company to their said amounts, respectively."

It was further alleged that said mining rights were conveyed to your orator in trust for said corporation, with a condition that
41 the shaft should be sunk upon said tract of land within two years from the 6th day of November, 1877; otherwise they were to become forfeited; that said mining rights were worth considerable, provided said shaft was sunk down to the coal thereunder within the time limited as aforesaid, but that in the unfinished condition in which said shaft was when said bill was filed said mining rights and tract of land were not worth sufficient to pay off said indebtedness of said corporation; that said mining rights and tract of land, with the buildings thereon, were all the property or effects which said corporation had; and it was further alleged that the plaintiffs in said bill believed that the stockholders in said corporation whose stock had been declared forfeited as aforesaid were still liable for the debts thereof, notwithstanding the forfeiture of their stock. It is then alleged that nearly all of the stockholders in said corporation were insolvent, and in the condition of said corporation it would be useless for it to resume business or to attempt to complete the enterprise for which it had been organized. The bill then prayed that the affairs of said corporation should be wound up, a receiver appointed, and its property sold and the proceeds applied to the payment of its said debts, and, if the same should be insufficient to pay said debts, then that the stockholders should be assessed to pay the balance, and that said corporation should be dissolved.

Your orator further shows that no summons was served upon your orator, either in his individual capacity or in his capacity as president of said corporation, and neither he nor said corporation appeared to said bill; that the summons issued in said case was served upon said Isaac Main as a director in said corporation, and the supreme court of the State of Illinois held said services illegal and the decree passed thereon void, as hereinafter stated; that at the August term, 1878, of said circuit court of Marion county, Illinois, a decree *pro confesso* was rendered against the defendants
42 to said bill and a final decree by default finding the facts alleged in said bill to be true and granting the relief prayed for, and in said decree George W. Hered was appointed receiver of said corporation to take charge of all the property, credits, and effects of said corporation and sell the same at public or private sale, giving due notice of said sale, for cash, and to make conveyance of said property upon such sale. Said Hered qualified under said appointment and took upon himself the duties of receiver of said corporation, and on the 28th day of September, 1878, he, at a pretended public sale, sold all of the property belonging to said corporation to said Isaac Main for the sum of $200, he being the only bidder, and he made and delivered to said Main a deed thereto properly acknowledged, and on the 11th day of February, 1879, said receiver

reported said sale to said court, which, on the 11th day of February, 1879, confirmed said pretended sale. Your orator avers that said property at the time of said pretended sale to Isaac Main as aforesaid was worth the sum of $20,000.

Your orator further shows that afterwards, to wit, on the 24th day of March, 1881, an appeal was taken from said decree of the circuit court of Marion county, Illinois, to the supreme court of said State, at Mount Vernon, in said State, and on the 15th day of August, 1882, by the consideration and judgment of said supreme court, said decree of said circuit court was reversed on the ground that the service of the summons issued in said case upon said Isaac Main as a director in said corporation when he was one of the plaintiffs in said case was not a legal service of said summons upon said corporation, and that the circuit court had no jurisdiction over said corporation, and that the decree passed on said service was null and void, and said supreme court remanded said case to said circuit court for further proceedings therein according to law.

Your orator shows that after said case had been remanded to said circuit court as aforesaid and he and several other de-
43 fendants filed their joint and several answer to the plaintiffs' said bill, and, after admitting certain allegations in said bill and denying others, they denied said allegations in the plaintiffs' bill, which is hereinbefore quoted, in regard to the services claimed to have been rendered for said company and money expended therefor, in the following words, viz: "They (said defendants) deny that the board of directors of said company wrongfully acknowledged an indebtedness to said Ozias Townsend, as set forth in the bill;" and in the separate answer *to* said St. Louis and Sandoval Coal and Mining Company, after admitting certain allegations in said bill to be true and denying other allegations, it referred to said allegations in plaintiffs' bill in the following language, viz: "This defendant denies that it fraudulently acknowledged an indebtedness to the said Ozias Townsend or issued paid-up stock to him without a sufficient consideration, or anybody else." Your orator says that the said allegations are all and the only allegations in said bill and answers in regard to the indebtedness of said corporation to your orator.

Your orator further shows that the said case was heard by said circuit court at the 1883 term thereof, to wit, on the 14th day of July, 1883, upon said bill, answers, and replications thereto and evidence, and thereupon, on the 7th day of August, 1883, it "found that said corporation had, on the 10th day of March, 1878, ceased to prosecute the work for which it was organized, leaving debts unpaid to said Frank Seymour and others (omitting your orator as a creditor, however, to the amount of $24,000); that the business of said corporation was mismanaged by its officers; that it was insolvent, and that it would be useless for said corporation to resume business on account of its financial embarrassment. It thereupon decreed that said corporation be dissolved, and that the appointment of said George W. Hered, receiver at the August term, 1878,

44 of said court (when said court had no jurisdiction over said corporation, as hereinbefore stated) be and the same was confirmed, and he was ordered to make further report of his actings and doings as such receiver;" thereupon your orator and the other defendants prayed an appeal to the supreme court of the State of Illinois, southern grand division thereof, which was granted, and the appeal duly taken.

Your orator further shows that he was in good faith endeavoring to sell as trustee said 380 shares in the capital stock of said corporation so as to raise money with which to carry on the sinking of said shaft and preparing the same for raising coal when mined and utilizing said mining rights as he had agreed with the subscribers to the capital stock of said corporation to do, as hereinbefore stated, and he had bargained with George W. Wharton and William Manning, two solvent and responsible men, for the sale of 170 of said shares, and he was just on the point of transferring said 170 shares to said Wharton and Manning and receiving the money therefor, which he would have turned into the treasury of said corporation for its use and benefit, and thus have enabled said corporation to pay for sinking said shaft and the necessary improvements in order to commence mining coal successfully, when he was interfered with and prevented from carrying out said bargain by the filing of said bill by said Isaac Main and others, as hereinbefore stated; and your orator verily believes, and he so charges the fact to be, that he could in a comparatively short time have sold the remainder of said 380 shares of stock to solvent and responsible persons and turned into the treasury of said corporation the proceeds of such sale, and in that event it would have had abundance of money with which to have carried on its business, if he had not been interfered with and prevented by the evil action of said Main and others in filing said bill and prosecuting it to a final decree, as hereinbefore stated.

Your orator further shows that, in pursuance of his election
45 as president and *ex officio* superintendent of said St. Louis and Sandoval Coal and Mining Company, he faithfully performed all the duties incumbent on him as such officer from the first day of January, 1878, until the affirmance by the supreme court of the State of Illinois on the 25th day of January, 1886, of said decree of the circuit court of Marion county, Illinois; that the board of directors of said corporation fixed his salary as president and *ex officio* superintendent at $150 per month; that in addition to his salary said corporation agreed to refund to your orator his necessary traveling expenses while away from home on the business of said corporation, he all the time residing in the city of St. Louis, Missouri; that between the first day of January, 1878, and the 27th day of March, 1878, he paid, laid out, and expended the sum of $510 for the use and benefit of said corporation; that in said amount is included the sum of $200 which your orator paid to Samuel Ewing on the 9th day of January, 1878, the purchase-money for said tract of land upon which said shaft was sunk, as hereinbefore stated.

Your orator avers that said corporation has never paid him said debt of $10,000 or any part thereof, nor has it refunded to him the said purchase-money paid to said Samuel Ewing for said tract of land as aforesaid or any part thereof, and said corporation still owes him therefor and the interest thereon from the time that said debts should have been paid.

Your orator further shows that at the February term, 1885, of said circuit court the plaintiffs in said bill filed a supplemental bill making The Sandoval Coal and Mining Company a party defendant in said case, and it appeared and filed an answer and cross-bill in said case at the same term of said court.

Your orator further shows that in pursuance of the scheme hereinbefore stated, immediately after the pretended sale of said property belonging to said corporation to said Isaac Main as aforesaid

— and a portion of the plaintiffs in said case and several
46 other persons, as your orator is informed and believes, united and organized under the statutes of the State of Illinois a new corporation, with its chief office at Sandoval, called the Sandoval Coal and Mining Company, to take said property off his hands, including the shaft which said old corporation had commenced sinking, as hereinbefore stated, and to drift from said shaft under the tract of land hereinbefore described to adjoining lands conveyed to your orator in trust for said old corporation as aforesaid, and to utilize said tract of land, shaft, and mining rights for said new corporation in the same way that said old corporation intended to utilize them if it had not been interfered with by the bill filed by said Isaac Main and others, stockholders in said old corporation, as hereinbefore stated.

That said new corporation was expressly organized by said Main and others for the purpose of having the property of said old corporation transferred and conveyed to it by and through the void sale thereof to him by said George W. Herrod, as receiver, as hereinbefore stated, and in pursuance of the scheme to sell out and divert all of the assets out of said old corporation and vest them in said Main, and thus prevent your orator from collecting said sum of $10,000, which had been audited and allowed in his favor by the board of directors of said old corporation, as hereinbefore stated, and also to prevent your orator from collecting his salary and necessary traveling expenses incurred while away from home on the business of said old corporation, as hereinbefore stated, said Main, on the — day of ——, 1879, transferred and conveyed the said tract of land upon which the shaft was sunk, as herein stated, said mining rights, and all the assets of said old corporation which had been pretendingly sold to him by said Herrod, as receiver as aforesaid, at the nominal sum of $200, but really on condition that said new corporation would pay all the debts of said old corporation except the said debts of your orator; that said new corporation paid all of the debts of said old cor-
47 poration except your orator's, amounting to the sum of $2,465.30; that the new corporation took said property with full knowledge and notice of the debts which said old corporation was owing to your orator, and also with full knowledge and notice

of such scheme to prevent your orator collecting his said debts and claims of said old corporation, as hereinbefore stated, and that said property at the time of said void sale was charged with a trust in favor of and liable to your orator as a creditor of said old corporation for the payment of your orator's said debts and claims, and also at the time that said Main transferred and conveyed it to said new corporation was actually worth eight times more than the debts which it agreed to pay and which it did pay—that is to say, the actual cash value of said property at said times, respectively, was at least $20,000, and said new corporation was not a *bona fide* purchaser of said property.

Your orator further shows that the Sandoval Coal and Mining Company in its answer admitted all the allegations in said original and supplemental bills of Main and others, and it at the same time filed a cross-bill to said original and supplemental bills, in which it recited the facts in substance as hereinbefore stated, and then it alleged that it had in good faith bought said property from said Isaac Main and paid all of the debts of the St. Louis and Sandoval Coal and Mining Company, amounting to the sum of $2,465.30, your orator's said debts not being embraced therein; that it had made valuable improvements of and under said tract of land, upon which mining rights had been secured by your orator as aforesaid to the amount of $25,000; that the plaintiffs in said case against said old corporation and others were the only legal stockholders therein; that your orator and other individual defendants in said case were not *bona fide* stockholders in said old corporation and had no right as stockholders therein, and it prayed the court to so decree, and that the plaintiffs in said case were the only valid and legal stockholders in said old corporation who had
48 any right to dispose of its property; that said plaintiffs be ordered to convey in the name of said old corporation by a valid conveyance said tract of land on which said shaft was sunk, and also said mining rights secured by your orator for the use and benefit of said old corporation as aforesaid by a day to be fixed by the court, and in default of such conveyance by said parties that a master in chancery of said court execute a deed of conveyance and deliver the same to said Sandoval Coal & Mining Company; that said St. Louis and Sandoval Coal & Mining Company be restrained from prosecuting and ejectment suit against said corporation in said court to recover said property; also from prosecuting an action of trespass against James S. Martin and others, officers and agents of said new corporation, for trespassing on said property; also that said original suit against said new corporation be dismissed. Answer was filed to said cross-bill by your orator, said old corporation, and other defendants at the February term, 1885, of said court and a replication to said answer was filed at the same term; and at the August term, 1885, of said court said case came on for hearing on said original and supplemental bills and answer thereto and replication, and on said cross-bill and the answers thereto, and replication and the evidence in the case, and on the 25th day of August, 1885, said court passed a final decree, in

which it granted the relief to said new corporation which it had prayed for; thereupon your orator and said old corporation and other defendants to said original, supplemental, and cross bills prayed an appeal to the supreme court of the State of Illinois, southern grand division thereof, which was granted, and an appeal duly taken to said supreme court, and on the 25th day of January, 1886, by the consideration and judgment of said supreme court, said decree of said circuit court on said original, supplemental, and cross bills were all affirmed.

Your orator further shows that after said original decree
49 *pro confesso* had been held void by the supreme court of Illinois, as hereinbefore stated, and, as a consequence, the sale under said decree of the property of said old corporation to said name was also void. There was no new sale of said property under the decree passed on the 7th of August, 1883, when the circuit court of Marion county, Illinois, had acquired jurisdiction over said old corporation; and your orator avers that said sale was and is null and void, because the court passing said decree under which said sale was made had no jurisdiction over said old corporation; that Main acquired no title by said sale, and he could and did impart no title to said new corporation by his pretended sale to it.

Your orator avers that the point whether said St. Louis and Sandoval Coal & Mining Company was liable to your orator for his time and labor spent and money paid, laid out, and expended in procuring said mining rights to himself as trustee for said corporation before the organization thereof, and which would have enured to the benefit of said corporation if it had not been *re*solved through the interference of said Isaac Main and others, as hereinbefore stated, and also the services and legal fees paid by him in getting said corporation incorporated, as hereinbefore stated, and also his salary as president and *ex officio* superintendent of said corporation from the first day of January, 1878, until the affirmance by the supreme court of the said State, on the 25th day of January, 1886, of said final decree dissolving said corporation as aforesaid, and his traveling expenses while away from home on the business of said corporation, and also the two hundred dollars purchase-money paid to said Samuel Ewing for said tract of land upon which said shaft was sunk, as hereinbefore stated, was not in issue in said cases or either of them and was not determined or adjudicated in said cases or inei ther of them, and your orator is not estopped by the decrees passed in said cases or either of them from setting up, asserting, and claiming his right thereto as a creditor of said
50 corporation.

Your orator further shows that no money was paid by the subscribers to the capital stock of said corporation, except the following persons, each of whom paid only five per cent. on the shares respectively subscribed by them: Isaac Main, Lambert Noland, Frank Seymour, Charles Rhinehardt, Jacob Lichty, Francis H. Edwards, and C. N. Rockwell; that said Isaac Main owes the sum of $950 on his subscription to the capital stock of said corporation, as hereinbefore stated; Lambert Noland, the sum of $95

on his subscription to said capital stock; Frank Seymour, the sum of $200 on his subscription of two shares to said capital stock; Charles Rhinehardt, the sum of $475 on his subscription to said capital stock; Jacob Lichty, the sum of $190 on his subscription to said capital stock; that the estate of Francis H. Edwards, deceased, owes the sum — $475 on the subscription made by said Francis H. Edwards to said capital stock, as hereinbefore stated; that said Francis H. Edwards died since the commencement of said suit, first having duly made and published his last will and testament, wherein he appointed Margaret E. Edwards the executrix thereof, which will was duly admitted to probate in the county court of Marion county, Illinois, in the year 1883, and thereupon said Margaret E. Edwards qualified as the executrix of said last will and testament and took upon herself the execution thereof, and she is still acting as such executrix, her administration under said will not being closed yet; that the estate of C. N. Rockwell, deceased, still owes the sum of $285 on the subscription by said C. N. Rockwell to said capital stock, as hereinbeforestated; that said C. N. Rockwell died since the commencement of said suit, first having duly made and published his last will and testament, wherein he appointed Lucinda N. Rockwell the executrix thereof, which will was duly ad-
51 mitted to probate in the county court of Marion county, in the year 1880, and thereupon said Lucinda N. Rockwell qualified as the executrix of said last will and testament and took upon herself the execution thereof, and she is still acting as such executrix, her administration under said will not yet being closed.

Your orator avers that said St. Louis & Sandoval Coal and Mining Company has no property or assets of any kind, and it had none at the time of its dissolution, as hereinbefore stated, except the unpaid balance on said subscription to its capital stock, as herein stated, and the equitable right of your orator as a creditor of said corporation to follow said property, which was pretendingly sold by George W. Hered as receiver to said Isaac Main and by said Main to said Sandoval Coal & Mining Company, as hereinbefore stated, and that it would be fruitless to first sue upon his said debts and recover a judgment at law against said St. Louis & Sandoval Coal & Mining Company, and then have an execution issued on said judgment and returned no property of said corporation could be found whereon said execution could be levied, before filing this bill.

Your orator further avers that said unpaid capital stock and said unpaid balance on said capital stock, and also said property pretended to be sold by said George W. Herrod as receiver to said Isaac Main and sold by him to said Sandoval Coal & Mining Company, were and are a trust fund for the payment of your orator's said debts against said St. Louis and Sandoval Coal and Mining Company, and that said sale to said Main and the sale by said Main to said Sandoval Coal & Mining Company as aforesaid was and is null and void, and it took said property with full notice and knowledge that your orator had a just and equitable claim thereon as a creditor of the St. Louis and Sandoval Coal and Mining Company for the payment of his said debts against said corporation, and it has ever

since held and still holds said property in trust for the payment of your orator's said debts.

52 Your orator further avers that the $2,465.30 which said Sandoval Coal & Mining Company paid or claims to have paid to the other creditors of the St. Louis and Sandoval Coal & Mining Company for said property is not and was not more than one-eighth the actual value of said property at the time the same was taken possession of by said Sandoval Coal & Mining Company, and that it would be harsh and grossly unjust, inequitable, and oppressive upon your orator as a creditor of said St. Louis and Sandoval Coal & Mining Company to allow said Sandoval Coal & Mining Company to retain said property and reap the fruit, as it has been doing ever since it took possession and still is doing, of the labor done and money spent by your orator in procuring said mining rights, organizing said St. Louis and Sandoval Coal and Mining Company into a corporation, and paying the purchase-money for said tract of land upon which said shaft has been sunk, as hereinbefore stated, without paying your orator's said debts.

Your orator further shows that all of the subscribers to the capital stock of said St. Louis & Sandoval Coal and Mining Company, except those who are made defendants to this bill, has been ever since they respectively subscribed and they still are residents of the city of St. Louis and citizens of the State of Missouri and are out of the jurisdiction of this court, or your orator would make them parties defendant to this bill.

Your orator further avers that he is the only creditor of said St. Louis and Sandoval Coal and Mining Company remaining unpaid.

Your orator had well hoped that said individual defendants, as well as said defendant, The Sandoval Coal & Mining Company, would have acknowledged and recognized the justice and equity of your orator's said debts against said St. Louis and Sandoval Coal and Mining Company and have paid the same; but now so it is, may it please your honors, that all of said defendants denies the justice and equity of said debts and claim and pretend that said St. Louis

53 and Sandoval Coal and Mining Company does not owe and never did owe said debts or any of them, and they furthermore claim and pretend that when said decree was passed dissolving said St. Louis and Sandoval Coal & Mining Company, as hereinbefore stated, that your orator's said debts against said St. Louis and Sandoval Coal and Mining Company were determined, decided, and adjudicated against your orator, and that said decree is a final adjudication and settlement of your orator's said debts, and they refuse to pay said debts or any of them or any part thereof, whereas your orator charges the contrary thereof to be the truth, and that your orator's said debts are just, honest, and equitable against said St. Louis and Sandoval Coal & Mining Company, and they have never been paid nor any part thereof has ever been paid, and said corporation still owes and is indebted to your orator therefor and the interest thereon since the time when they should have been paid, as hereinbefore stated.

All which actings and doings and pretenses of the said defend-

ants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator as a creditor of said St. Louis and Sandoval Coal & Mining Company in the premises; and your orator is ready and willing and he hereby offers to contribute his proportionate part towards the payment of his said debts if the court shall be of opinion and hold that he was a stockholder in the capital stock of the St. Louis and Sandoval Coal and Mining Company to the extent hereinbefore stated; in consideration whereof and forasmuch as your orator if entirely remediless in the premises according to the strict rules of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable, your orator invokes the aid of this honorable court.

To the end, therefor, that the said defendants to this bill may be required to make full, true, direct, and perfect answer to the
54 charges in the same, but not under oath, the answer under oath being hereby waived, and upon the hearing of this case that this honorable court will pass a decree requiring said individual defendants as subscribers to and holders in the capital stock, of said St. Louis and Sandoval Coal & Mining Company to pay the unpaid balance on their respective shares in said capital stock as hereinbefore stated, and that it will declare said pretended sale by said George W. Herrod as receiver of said St. Louis and Sandoval Coal & Mining Company to said Isaac Main and by said Main to Sandoval Coal and Mining Company null and void and said Sandoval Coal and Mining Company a trustee of said property for the payment of your orator's said debts, and if said Sandoval Coal and Mining Company shall fail or refuse to pay your orator's said debts or such part thereof as may be adjudged against it to pay, by a day to be fixed by the decree of this honorable court, that then said property or so much thereof as may be necessary to pay said debts shall be put up and sold to the highest bidder for cash and the proceeds of such sale applied to the payment of said debts, and that your orator may have such further and other relief in the premises as the nature of his case shall require and as to your honors shall *d*eem meet.

May it please your honors to grant unto your orator a writ of subpœna to be directed to said St. Louis and Sandoval Coal & Mining Company, the Sandoval Coal and Mining Company, Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of the last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of the last will of C. N. Rockwell, deceased, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court, and
55 then and there full, true, direct, and perfect answer make to all and singular the premises, and, further, to stand to, perform, and abide such further order, direction, and decree therein as this honorable court shall deem most meet.

JAMES CARR,

Solicitor for Complainant, Ozias Townsend.

——— ———, *Of Counsel.*

UNITED STATES OF AMERICA,
Eastern District of Missouri.

This day personally appeared before the undersigned, a United States commissioner in and for the eastern judicial district of Missouri, Ozias Townsend, who, being duly sworn by me, deposes and says that he has read and understood the foregoing amended bill; that the facts and matters therein, as stated, are true of his own knowledge except those facts and matters which are stated on information and belief, and as to them — to be true.

——— ———.

Subscribed and sworn to before me this 7th day of August, A. D. 1888.

MATTHEW R. CULLEN,
United State- Commissioner for the Eastern Judicial District of Missouri.

Filed August 14th, 1888.
JAMES T. JONES, *Clerk.*

And afterwards, to wit, on the twenty-eighth day of August, of the year last aforesaid, came again the defendants, by M. Schaeffer, Esq., their solicitor, and filed two separate answers to the amended bill of complaint; which said answers are as follows, to wit:

Circuit Court of the United States for the Southern District of Illinois.

56 OZIAS TOWNSEND *vs.* THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY, THE SANDOVAL COAL & MINING COMPANY, *et al.* } Amended Bill in Chancery.

The answer of The Sandoval Coal & Mining Company, one of the defendants, to the amended bill of complaint of Ozias Townsend, the complainant.

This defendant, now and at all times hereafter saving and *deserving* to itself all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said amended bill contained, for answer thereto or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

It believes that it is true that the complainant and others did attempts to organize the St. Louis and Sandoval Coal & Mining Company in December, 1877, substantially as in amended bill stated, and that parties subscribe for the capital stock, as in bill stated; but this respondent submits to your honor whether the facts as stated in amended bill do not show that said St. Louis and Sandoval Coal and Mining Company (hereinafter for convenience called the "old company") was ever legally organized under the laws of the State

of Illinois and whether it could enter into any valid contract for services or otherwise.

Further answering, the respondent says that it knows nothing of its own knowledge about services performed or money expended for said old company by said complainant, as in bill charged, but upon information and belief this respondent denies that said complainant spent from July 1st, 1877, to January 1st, 1878, or any part thereof in taking or securing mining rights for said old com-
57 pany or in getting up its organization under the statutes of the State of Illinois; denies also that complainant took or secured 436 or any other number of mining rights for the use of said old company; and this respondent denies that complainant paid, laid out, or expended of his own money the sum of $2,700 or any other sum in securing said mining rights or the incorporation of said company, as in said amended bill stated. This respondent knows nothing of any agreement between the complainant and the subscribers for stock for pay or compensation for his time and services, as in said amended bill stated.

Further answering, this defendant denies that said complainant paid Samuel Ewing, with his own money or otherwise, $200 or any part thereof for these two acres of land in bill described, but avers the truth to be that this defendant paid said Ewing for said land; and this defendant further denies that the said complainant obtained any valid title to any mining rights for said old company, but states the truth to be that a number of the owners of real estate in the vicinity of said two acres of land conveyed to said complainant in trust for said old company the right to take coal from under their land upon condition that said old company would sink a shaft to a paying vein of coal and work a coal mine there within two years from the date of such conveyances, and that said shaft was not sunk to a paying vein of coal by or for said old company within the time limited; wherefor- said mining rights were not earned but forfeited by said old company.

And this defendant charges and shows to your honor that whatever mining rights or rights to mine coal it has in the vicinity of said two acres of land it received by purchase or donation from the owners of the land directly and not from its purchase from Main, as in bill stated.

Further answering, this respondent says that it knows nothing, except as informed by said bill of complaint, of a meeting of the board of directors of said old company in the city of St. Louis, Mo.,
58 on the 20th of September, 1877, at which complainant's salary as president and superintendent of said old company is said in said amended bill to have been fixed at $150 per month and a set of by-laws in said bill to have been adopted by said board of directors of said old company, but this respondent charges that all that was done, if there was anything done, at said meeting was illegal and void, because said meeting was not authorized nor were its acts ratified as is required by law, as this defendant is informed and believes.

The defendant upon information and belief denies that said com-

plainant acted as president of said old company and discharged the duties of such president from the 1st day of January, 1878, until the 25th day of January, 1886, or any other time after May 2nd, 1878.

This respondent, further answering, says that it knows nothing of its own knowledge of a meeting of the directors of said old company in East St. Louis on the — day of ——, 1878, but this respondent charges that the action of the board of directors, when the director Isaac Main was not present, by which one-fifth of the capital stock of said old company was voted to this complainant was illegal and fraudulent and was one of the causes which led to the dissolution of said old company.

And this respondent, further answering, says that the complainant's bill herein, it thinks, set out substantially the facts set up in the bill of Francis H. Edwards *et al. vs.* said old company *et al.*, including the complainant, which bill was filed in the circuit court of Marion county, Illinois, in June, 1878, in which bill it was, among other things, charged that said $10,000 had been fraudulently credited to the complainant. It is also true that no summons was then served upon the complainant, but he and the other non-resident defendants to said bill were served by publication of notice under the statute of Illinois. It is also true that a decree *pro con-*
59 *fesso* on said bill was taken and entered of record at the August term, 1878, of said circuit court, by which decree said old company was dissolved. George W. Herrod was appointed receiver, with authority to take and dispose of the property of said old company and pay its debts; that he, as receiver, sold the property to Main for $200, and reported the sale to said circuit court at its February term, 1879, and said circuit court then approved said report and affirmed said sale, but this respondent denies that said property was at the time of said sale worth $20,000, and says that in its then condition it was not worth more than it sold for to Main. At the February term, 1880, of said circuit court of Marion county, Illinois, the complainant herein, to wit, Ozias Townsend, and Mary A. McCabe, William H. Ross, John B. Mears, and Elizabeth Townsend, some of the defendants in the original bill who had been served by publication of notice, upon petition under the statute of Illinois were allowed to come into circuit court and answer said bill. They then filed their answer, denying some of the material allegations in the bill; replication to their answer was then filed and the cause continued for testimony. At the February term, 1881, of said circuit court the cause was heard on bill, answer of said Ozias Townsend *et al.*, replication thereto, records, depositions, and testimony taken by a special master in chancery, and, after a full hearing and due consideration of said court, the court ordered and decreed that the original decree made and entered of record at the August term, 1878, in said cause stand as confirmed against the said defendants so answering, with costs. This respondent says that this decree of February term, 1881, was never reversed and is now in full force and effect. It has never been reviewed by any court and cannot now be reviewed by any court; and it is in the

face of that order of said circuit court that the complainant herein now comes into this court and claims pay for services as president and superintendent of said old company after February, 1881.

60 Further answering, this respondent says that it is true that in May, 1882 (but not in March, 1881, as in bill stated), the said decree of said August term, 1878, was taken to the supreme court of the State of Illinois by the said old company alone, not by the complainant herein, by a writ of error and not by appeal, as in bill stated, and in June, 1882, the said supreme court affirmed so much of said decree of August, 1878, as related to the appointment of the receiver and reversed the remainder of said decree for the reason of no valid service on said old company, as is fully shown by the opinion of said supreme court in the case of St. Louis and Sandoval Coal and Mining Company *vs.* Francis H. Edwards *et al.*, 103 Ill., 472.

This respondent insists that this order of said supreme court does not affect said decree of February, 1881, nor do the reasons for said partial reversal apply to the complainant herein, he having answered said bill before the hearing at February term, 1881, in said circuit court as aforesaid.

This respondent, further answering, says that it is true that, said cause being remanded to said circuit court by said supreme court of Illinois, said cause was heard by said circuit court at its February term, 1883, as in bill stated, and in July, 1883, a decree was rendered by said circuit court finding said bill to be true and dissolving said old company, approving the appointment of said Herrod as receiver, and ordering said receiver to make further report, substantially as in bill stated; but this respondent denies that any appeal was taken from this last-mentioned decree, as stated in complainant's bill. Exceptions were filed to this decree by the attorneys of said old company, which were continued from term to term until the February term, 1880, when the exceptions were overruled. The said receiver, George W. Herrod, then reported in substance the sale made by him to Main, as before reported, and that Main had sold said property to the Sandoval Coal and Mining Company, this respondent, for enough to pay the debts of the old company;

61 that those debts were paid, and, as far as he knew, said old company had no other property and there was nothing further for him to do.

It is true, as stated in complainant's bill, that at said February term, 1885, of said circuit court the complainants in the original bill filed a supplemental bill in said cause, making this respondent, The Sandoval Coal and Mining Company, a defendant to enable it to set up its rights in said property acquired since the filing of the original bill, and that this respondent then appeared and filed its answer, setting up its rights, and with its answer it filed its cross-bill for affirmative relief, making all the parties to the original suit, including the complainant in this suit, defendants to said cross-bill; that the answer and cross-bill of this respondent among other things state and charge substantially that in August, 1878, Francis H. Edwards *et al.* presented their bill in chancery in the circuit court of

Marion county, Illinois, against the said old company and the complainant in this bill and others for a dissolution of said old company, for the appointment of a receiver, and other relief, and sets out substantially the matters stated in the original bill, and that at said August term, 1878, said circuit court entered a decree in favor of said complainants, Edwards *et al.*, as prayed, as in this answer before stated. Said cross-bill also sets up the previous litigation between the parties to said original suit, as hereinbefore stated, and the orders and decrees of the courts, as hereinbefore stated; cross-bill also states that Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Rhinehardt, Francis H. Edwards, Henry Willhoener, and Frank Seymore were the only stockholders in said old company who ever paid anything on their stock; that the complainant in this bill, Ozias Townsend, Albert E. Ross, and the others who had subscribed had paid nothing and refused to pay their assessments and were in such a pecuniary condition that they could not by law be compelled to pay; that they were not equitable stockholders in said old company, but that the stockholders
62 who had paid their assessments and were solvent and responsible for the amount of their stock should be allowed in equity to attend to the disposition of the assets of said old company; that the stock issued by the complainant in this bill to his wife, Elizabeth Townsend, $5,000, to George W. Wharton $4,000, and to T. N. Blackman $1,000, as paid-up stock, was all fraudulently issued with intent to defraud the said old company out of one-fifth of its capital stock, for which said old company never received anything.

Cross-bill further says that after the purchase of said property by Main this respondent, The Sandoval Coal and Mining Company, purchased said property from said Main for $2,465.30 paid to him, which was all said property was then worth for any purpose, and that said Main acted in said sale with the knowledge and consent of all the valid stockholders of said old company; that early in 1879 this respondent took possession of said property, spent some $2,500 in sinking the shaft and making other necessary improvements on said two acres of land, and that while said improvements were being made and said shaft was being sunk the said stockholders and the officers of said old company knew what was being done, and knew that this respondent claimed title to said property, and neither of them ever objected to said work being done, nor did any of them claim title in said old company to said property until long after said shaft was sunk to a paying vein of coal, and then only by the complainant in this bill and other pretended and fraudulent stockholders.

Said cross-bill further charges that said complainant, Ozias Townsend, without authority in August, 1883, used the name of said old company in bringing a suit in ejectment for said property against this respondent; that said old company appealed to supreme court of Illinois at November term, 1883, and in September, 1884, — reversed said judgment and remanded said cause to said circuit court for a new trial. Cross-bill asks that the trial of said

ejectment suit be stayed until the suit on cross-bill be heard
63 and then perpetually enjoined. Cross-bill states that said complainant in the name of said old company commenced other suits against this respondent and its officers and employees in said circuit court, which it asks to be enjoined. Cross-bill further says that said shaft and other improvements are valuable to respondent because of its rights to mine coal in the vicinity of said shaft and connected with the underground work on said two acres of land, and that the two acres of land would be of little value to said old company because it had forfeited its rights by failure to sink its shaft within two years from December, 1877. Said cross-bill prays substantially as stated in bill and for other and further relief, and that defendants M. E. Edwards, Lambert Noland, Frank Seymour, Charles Reinhardt, Issac Main, Jacob Lichty, and Mrs. Rockwell answer under oath, and that the complainant and the other defendants answer without oath.

Answers were filed by said old company, the complainant herein, Ozias Townsend, and some of the other defendants, not under oath, denying nearly all the allegations in said cross-bill, to which there was a replication by this respondent.

An answer under oath was filed by the defendant Charles Reinhardt and the other defendants who were called upon to answer under oath, stating that the allegations in cross-bill were true, as they are informed and believe, and that they know that it is true that Main purchased said property at the receiver's sale and sold the same to this respondent to save the solvent stockholders from liability from the debts of said old company, and that such sale was made with the consent of such solvent stockholders; that Main was a director when said old company ceased doing business in March, 1878; that in May, 1878, at a meeting of the board of directors of said old company, the stock of said old company upon which no assessment had been paid was declared forfeited, and Ozias Townsend, the complainant herein, was declared not qualified to hold the office
64 of president because he had no stock, said board of directors then adjourned in a wrangle and confusion and never met again, and the said old company after that never did anything towards completing or prosecuting its enterprise of sinking a coal shaft. This respondent, The Sandoval Coal and Mining Co., soon after its purchase from Main as in cross-bill stated, took possession of said property, sank the shaft, put buildings and other improvements on said property, as in cross-bill stated, and is now in possession and operating it as a coal mine, and that the officers and stockholders of said old company knew of such occupancy and expenditures and that said Sandoval Coal & Mining Company claimed title to said property, but never objected to such occupancy or improvements until long after the same were made, to wit, in 1883, and even then title to said property in said old company was claimed only by some pretended and fraudulent stockholders who never paid anything to said old company for their supposed stock and who use the name of said old company without authority in suits, as in cross-bill stated; that complainant in cross-bill (this re-

spondent) paid for said property all that it was worth and more than it was worth for any purpose other then sinking and operating a coal shaft and mine, and that said old company was in such a financial, disorganized, and confused *a* condition that it could not have completed its enterprise; that the said two acres of land, with the improvements put thereon by complainant in cross-bill, would be of little value to said old company, as it had forfeited and lost its supposed mining rights and royalty by failure to sink a shaft, &c., within the time limited by the deeds conveying the same, but that said two acres of land are of great value to the complainant in cross-bill, not only because of what they have actually cost it, but because of the property, buildings, coal, and right to mine coal which it has in the immediate vicinity of said coal shaft, the value of which
65 would be lost if it had not the use of the shaft to operate the same, &c.; and this respondent admits that a trial was had at said August term, 1885, of said circuit court of Marion Co., Ill., but says that the findings and decree of said circuit court were not as stated *as* in said amended bill of complaint, but they were as follows, to wit:

August 25th, 1885, being the third Tuesday of the August term of this court, the court, having duly considered the evidence introduced in this cause as well as the arguments of the solicitors, and being now fully advised, does find that the material allegations in the cross-bill herein are true, and that the allegations in the sworn answer of Chas. Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell to said cross-bill are also true; that the following-named def'ts in said cross-bill, to wit, Isaac Main, L. Noland, Jacob Lichty, C. N. Rockwell, dec'd, now represented by his adm't'x, Mrs. C. N. Rockwell; Chas. Reinhardt, Francis H. Edwards, now represented by his executrix, Mrs. M. E. Edwards; Henry Wellhoeuer, and Frank Seymour, are the only stockholders in the St. Louis and Sandoval Coal & Mining Co. who paid anything on their said stock, and that they are the only parties or stockholders who have any interest in or right to determine how the assets, if any, of said company which has been dissolved by the decree of this court shall be disposed of, to whom, and for what consideration; that the other def'ts in said cross-bill, to wit, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thos. B. Hill, Jas. Sheals, Jas. Collins, Jno. B. Mears, Wm. H. Ross, True N. Blackman, and Geo. W. Wharton, never paid anything for their supposed stock in said St. Louis and Sandoval Coal and Mining Company, and if any such stock was issued to them or either of them it was wrongfully and fraudulently done, and neither of them had any interest in the assets of said company nor any right to interfere with the disposition of such assets, and that they or some of
66 *of* them have fraudulently confederated and wrongfully used the name of said St. Louis and Sandoval Coal & Mining Co. in the prosecution of suits for the possession and injuries to what was once the property of said company, in total disregard of the wishes and interests of the valid stockholders of said company, and

that they should be enjoined from using said name of said company and from prosecuting any such suits; that at the instance and upon the motion of the said valid stockholders in said St. Louis and Sandoval Coal & Mining Co., to wit, Francis H. Edwards, Lambert Noland, Henry Wellhoeuer, Frank Seymour, Chas. Reinhardt, Isaac Main, Jacob Lichty, and C. N. Rockwell, one George W. Hered was by this court appointed to receive the property of said company under the direction and with the advice and consent of said valid stockholders. He, the said Geo. W. Hered, on the 28th day of Sept., 1878, sold and conveyed to one Isaac Main all the property of said company, to wit, the south half of four acres of land north of the right of way of the O. & M. R. R. and adjoining Primmer's addition to the village of Sandoval and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through the said four acres from said Primmer's addition eastward, in the west half of the northeast quarter of section seventeen, T. 2 N., R. 1 east, in Marion Co., Ill., it being the same land in bill and cross-bill described, and also the buildings, mining fixtures, and all rights to mine coal in certain lots and lands described in bill and cross-bill.

That the said Isaac Main bought said property in cross-bill described at the instance and request of all the valid stockholders of said St. Louis and Sandoval Coal & Mining Co. for the purpose, if possible, of *de*lling the same for enough to pay off the indebtedness of said company, which then amounted to over two thousand dollars, so as to save said valid stockholders from further
67 liability for such debts, and that said Main afterwards, at their instance and request, sold and conveyed all the said property in consideration of the sum of $2,465.30, paid by the complainant in said cross-bill to said complainant, The Sandoval Coal & Mining Co., which said sum of $2,465.30 was all said property was then worth and more than it was worth for any other purpose other than mining purposes, after an outlay of a large sum of money to make it valuable for that purpose; that The Sandoval Coal and Mining Co., the complainant is said cross-bill, soon after its purchase of said property from said Main, to wit, in the spring of 1879, took possession of said land and property, and, with the consent and under the advice of all of said valid stockholders of said St. Louis and Sandoval Coal & Mining Co., sunk a coal shaft, erected buildings and machinery thereon, and expended in sinking said shaft and erecting such buildings and other permanent fixtures and machinery over the sum of twenty-five thousand dollars; all of which was done with the knowledge, consent, direction, and acquiescence of said valid stockholders, and no objections to such improvements were made or any title claimed to said property by even the insolvent or fraudulent or pretended stockholders until long after said expenditures had been made, and that such expenditures were made in good faith under the belief that the title to said property was perfect in said complainant in cross-bill; that the complainant in cross-bill owns other lands, buildings, and improve-

ments and mining rights in the immediate vicinity of and connected with the lands, &c., in controversy in this suit, both by buildings and machinery on the surface and by works and passages underground which would be comparatively valueless to complainant in cross-bill if its title to said two acres of land were not perfected. It is therefore ordered, adjudged, and decreed by the court—

1st. That the def'ts in cross-bill, Andrew Roll, Johnson A. Power, Albert A. Ross, Mary A. McCabe, Ozias Townsend, Eliza-
68 beth Townsend, Thos. B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, and Geo. N. Wharton, — not equitable or valid stockholders in said St. Louis and Sandoval Coal & Mining Co., and that they have no interest in the assets of said company and have no right to interfere with the application of any such assets nor to sue for the same.

2nd. That the def'ts in cross-bill, Margaret E. Edwards, as executrix of Francis H. Edwards, dec'd, and Lambert Noland, Henry Wellhoeuer, Frank Seymour, Chas. Reinhardt, Isaac Main, Jacob Lichty, and Mrs. C. N. Rockwell, as the adm'x of the estate of C. N. Rockwell, dec'd, are the only equitable and valid stockholders in said St. Louis and Sandoval Coal & Mining Co. and have full right and power to dispose of all the property of said Co. which has been dissolved by the decree of this court in original bill in this cause at a former term of this court.

3rd. That the said equitable and valid stockholders, to wit, Margaret E. Edwards, as executrix of Francis H. Edwards, dec'd; Lambert Noland, Henry Wellhoeuer, Frank Seymour, Chas. Reinhardt, Isaac Main, Jacob Lichty, and Mrs. L. N. Rockwell, as adm'x of the estate of C. N. Rockwell, dec'd, be, and they are hereby, ordered to execute and deliver to the complainant in cross-bill, The Sandoval Coal & Mining Co., a valid deed of conveyance in the name of the St. Louis and Sandoval Coal & Mining Co. for the said property, to wit, the south half of four acres of land on the north of the right of way of the Ohio & Mississippi R. R. and adjoining Primmer's addition to the town (now village) of Sandoval and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through said four acres from said Primmer's addition eastward, in the west half of the northeast quarter of section seventeen (17), T. 2 N., R. 1 east, in Marion county, Illinois; also for the mining rights and royalty in and to certain lands and lots con-
69 veyed by sundry persons to Ozias Townsend and described in deeds recorded in Record Book D D, commencing on pages 74 and 90, of deed records of said Marion county, and conveyed by said Ozias Townsend to said St. Louis and Sandoval Coal & Mining Co. and by Geo. W. Hered, as receiver, to said Isaac Main, all in Marion county, Ills., by the fifteenth day of September, 1885, and in default of such deed being made and delivered as aforesaid by the day aforesaid that the master in chancery of this court execute such deed of conveyance and deliver the same to said Sandoval Coal & Mining Co.

4th. That the said St. Louis & Sandoval Coal & Mining Co., *to*

agents and attorneys and all other persons in its name or behalf, be, and the same are hereby, perpetually restrained from prosecuting any and all suits against the Sandoval Coal and Mining Co., either in ejectment for said property or trespass to said property, and that the ejectment suit No. 45 of this term of this court and the suit for trespass No. 54 of this term be, and they are hereby, restrained and their prosecution perpetually enjoined and said suits dismissed at cost of plaintiff.

It is further ordered by the court that all costs that have accrued herein, both those supplemental bills and cross-bills, be taxed against the def'ts in the original bill, and that execution may issue for the same in the name of the complainants in the original bill.

Appeal prayed by def'ts in cross-bill. Appeal allowed upon said def'ts in cross-bill filing within 60 days from this date, Aug. 25th, 1885, certificate of evidence and an appeal bond in proper form in the sum of one thousand dollars, with good and sufficient security, to be approved by clerk of this court.

The above and foregoing decree was filed Aug. 26th, 1885.

J. B. LEWIS, *Clerk.*

The above decree approved by—

WM. H. SNYDER, *Judge.*

70 This respondent admits that this decree was reviewed by the supreme court of Illinois and affirmed as in bill stated and as reported in the case of The St. Louis & Sandoval Coal & Mining Co. *et al. vs.* The Sandoval Coal & Mining Company, 116 Ill., 170; and this respondent avers that by virtue of said decree the master in chancery of said Marion Co., Ill., made, executed, and delivered to this respondent a good and valid deed to said property, under which deed this respondent holds said property as an absolute and indefinite estate and not in trust as in amended bill; and this respondent further says the mining rights or rights to mine and remove coal which it has and uses, it secured by purchase and donation from the parties who owned them, and the lands under which such coal is, and not by said conveyance from Main, as in bill stated, for the reason that the title in said old Co. and in Main had been lost and forfeited by reason of failure to sink the shaft within the time limited in the conveyance.

And this respondent, further answering, denies that this respondent "took said property from said Isaac Main with full knowledge and notice of the debts and claims" of said complainant against said old Co., as stated in the amended bill; but, on the contrary, this respondent says that it then knew nothing of such debts or claims, and it believes there were none, and it insists that so far as this respondent and the complainant are concerned all business matters existing between them were fully and finally settled in the said decree of Aug., 1885, and that the "so-called" pretences for not paying complainant, as charged in amended bill, are true.

And this respondent, further answering, denies that the complainant is entitled to the relief or any part thereof in the said bill

of complaint demanded, and prays the same advantage of this answer as in case of a demurrer to said bill; and having fully answered all that is material for it to answer, this respondent
71 prays to be dismissed with its costs and charges herein unjustly caused by the complainant, &c.

THE SANDOVAL COAL & MINING CO.,
By M. SCHAEFFER, *Its Att'y and Solicitor.*

STATE OF ILLINOIS, }
Marion County, } *ss:*

M. Schaeffer, being duly sworn according to law, on oath says that he is att'y and solicitor for The Sandoval Coal & Mining Company, the def'ts; that he has prepared the above answer, and that he *ak*ows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on information and belief, and as to those matters he believes them to be true.

M. SCHAEFFER.

Subscribed and sworn to before the undersigned, James B. Lewis, clerk of the circuit court of Marion county, Illinois, this 25th day of August, 1888.

Witness my official seal.

[SEAL.] JAMES B. LEWIS, *Clerk.*

Filed Aug. 28, 1888.
J. T. JONES, *Clerk.*

72 Circuit Court of the United States for the Southern District of Illinois.

OZIAS TOWNSEND
vs.
THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY *et als.* } Amended Bill in Chancery.

The joint and several answer of Charles Rhinehardt, Isaac Main, Lambert Noland, Margaret E. Edwards, Lucinda N. Rockwell, Jacob Liehty, and Frank Seymore, defendants, to the bill of complaint of Ozias Townsend, the complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said amended bill contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, come and for answer say—

That it is true that the complainant, Ozias Townsend, came to Sandoval, Illinois, in A. D. 1877 and attempted to organize a company under the name of the St. Louis and Sandoval Coal and

Mining Company, and that these respondents subscribed stock, substantially as stated in bill; but these respondents say that the said complainant, Ozias Townsend, then and there represented himself as wealthy, and that he had ample means to buy the necessary land and sink a shaft to a paying vein of coal, and that he would furnish the money to do so, and that he would take all the stock which was not taken and subscribed by the residents of said town of Sandoval, and that the complainant then and there did subscribe such stock to the amount of, to wit, $39,300.00 (not in trust for said St. Louis and Sandoval Coal and Mining Company, hereafter for convenience called "old company"), as stated in bill, but for himself, as
73 these respondents were then and there by him assured.

Further answering, these respondents deny that the said complainant spent all his time or any time from the 1st of July, 1877, to January 1st, 1878, in taking or securing mining rights for said old company or in steps to get said company organized; they deny that he took or secured 436 or any number of such rights, as in bill stated. These respondents deny that the complainant laid out or expended of his own money the sum of $2,700.00 or any other sum in securing mining rights or otherwise for said old company, as in bill stated, and they further deny that they or the said old company agreed to pay complainant a fair or reasonable compensation for his time, as in bill stated.

These respondents, further answering, say that it is not true that the complainant paid to Samuel Ewing the sum of $200 or any other sum for said two acres of land or any land, as in said bill stated; but these respondents state the truth to be that the defendant The Sandoval Coal and Mining Company, per the defendant Isaac Main, paid said Ewing for said land, and they deny that the complainant paid said Samuel Ewing for said land, as repeatedly stated in said bill.

Further answering, these respondents, except Main, say that they know nothing, except from hearsay, of a meeting of the directors of said old company in the city of St. Louis, Missouri, nor do they know anything of the fixing of the salary of complainant or of an agreement to pay his traveling expenses, as in bill stated; neither do these respondents know what, if any, by-laws were adopted by that meeting; but these respondents say upon information and belief that if there was any such meeting and action, as in bill stated, it was unauthorized and void, and the respondent Main says that it is true there was such a meeting in St. Louis, Missouri, on the 20th of December, 1877, at which the salary of the president of said old company was attempted to be fixed at $150.00 per month for
the first term, commencing January 1st, 1877, and that certain
74 by-laws were then and there adopted, but he has no copy of such by-laws and does not know whether or not there were any such, as stated in bill; but he does remember that by-laws, article 4, section 6, was in these words: "If any stockholder shall fail to pay assessments when calls are made, he shall pay a fine of ten per cent., to be added to the amount unpaid and charged against him. Should the next assessment not be made, then again ten per

cent. shall be added to the amount due, and so on, till the arrears of said stockholders equal the amount which he has paid in, and in such case the share or shares of stock may be declared forfeited."

And the respondent Main further says that afterwards, at a meeting of the directors of said old company at which T. W. Blackman, J. B. Mears, H. Wellhoener, and the complainant, Ozias Townsend, were present, on the 29th day of April, 1878, after an assessment of five per cent. had been made upon all the stock issued by said company, "Mr. Blackman moved that all stock be declared forfeited on which the assessments have not been paid, except that held by Dr. Ross, Mr. McCabe, and Captain Hill: carried, *Mary* Blakman, Mears, and Wellhoener voting in the affirmative."

And the respondent Main, further answering, for himself says that he has not a copy of the by-lays of said old company, but that art. 1, sec. 2, of said by-laws in substance provided that no person who was not a stockholder in said company could hold any office, president or director, in said company.

And these respondents, further answering, say that at a meeting of the board of directors of said old company held at a hotel in the city of East St. Louis, in the State of Illinois, the following, among other, proceedings were had, to wit:

"Board was called to order by the secretary in the absence of a presiding officer. On motion of Mr. Main, Mr. Mears was nominated as president *pro tem.* of this board, which motion was seconded by Mrs. Blackman; carried, Messrs. Blackman, Main, Wellhoener voting in the affirmative, Mr. Mears not voting. Mr.
75 Blakeman inquired of the secretary if the books of this company showed that Ozias Townsend is a stockholder in this company. The secretary stated that the books showed that Ozias Townsend is not a stockholder; that all stock held by him has either been sold, forfeited, or transferred by him, and that he is not a stockholder in this company at the present time, and that there is a vacancy in the board occasioned by the disqualification of said Ozias Townsend.

Mr. Main introduced the following preamble and resolution:

Whereas Ozias Townsend, late president and superintendent of this company, has together forfeited for non-payment of assessment and sold and assigned all stock owned, subscribed for, and held by him in this company; and

Whereas, under art. 1, section 2nd, of the by-laws of this company, he is no longer eligible to hold office in said company:

Therefore be it resolved, That the office of president and superintendent be, and is hereby, declared vacant.

And be it further resolved, That we, the remaining directors of said company, do proceed to elect a president *pro tem.* to preside at this meeting, *wile* (*via*) Ozias Townsend, disqualified as aforesaid. Mr. *Mea* Mears moved that the above resolutions be adopted, which motion was seconded by Mr. Main; carried, Messrs. Main, Mears, Blackman, and Wellhoener voting in the affirmative."

And these respondents charge and show to your honor that that meeting of said directors of said old company on the 2nd day of

May, 1878, was the last meeting ever held by them, and that after that date said old company did absolutely nothing in the way of completing its said enterprise; and these respondents charge and say that if the complainant after that date (May 2nd, 1878), did anything for said old company or in the name of said old company, as president or otherwise, it was done without authority and against the will and interest of these respondents; and these
76 respondents state the truth to be that the said complainant actually but fraudulently issued so-called paid-up stock of said old company to the aggregate amount of $10,000, to wit, to his wife, Elizabeth Townsend, $5,000; to George W. Wharton, $4,000, and to T. N. Blackman, $1,000, for which the said old company never received anything; and upon information and belief these respondents charge the truth to be that the said complainant has sold, hypothecated, and transferred, without right or authority, to divers persons, whose names are not known to these respondents, a large amount of the stock for which he subscribed in said old company, for which he received large amounts of money to his own use, of which and for which stock he never paid anything to said old company.

These respondents, further answering, distinctly and emphatically deny that the said old company or these respondents owe to said complainant anything, and they deny that the said complainant is legally or equitably entitled to anything from said old company or any of the defendants herein or in this suit either for services, money paid out, or anything else, as charged in said bill or otherwise, notwithstanding his many repetitions of such claims in his bill of complaint.

And these respondents further say that all the property of said old company was, as stated in bill, put into the hands of George W. Herrod as receiver, and that he acted as such receiver from thence, August, 1878, to 1885, and yet the complainant never presented his said pretended claim or any claim to said receiver; and respondents further aver that the said old company was dissolved by order of court, as in bill stated, in August, 1883, so that under the laws of the State of Illinois no claim can be presented against said old company after August, 1885.

And these respondents, further answering, show and aver that if the complainant ever had any cause of suit or any just claim against the defendants in this his bill of complaint for or concerning any of the matters, transactions, or dealings in his said bill of com-
77 plaint mentioned (which these respondents do not admit, but deny) the same did accrue or arise more than five years before the said bill of complaint was exhibited to this hon. court; and these respondents say and aver that they did not at any time within five years before the filing of the complainant's bill herein ever promise or agree to come to any amount for or to pay or in any way satisfy the complainant any money for or concerning any of the matters, transactions, or claims in the complainant's said bill of complaint charged or alleged; wherefore these respondents charge that by the statute of limitation of the State of Illinois, upon

which respondents rely and here set up and plead, the said complainant is barred from having and maintaining his said bill of complaint against these respondents. These respondents, further answering, say that it is true that these respondents *et al.* filed their bill in chancery in the circuit court of Marion county, Ill., in 1878, as in bill stated, and that a trial was heard and decree rendered at August term, 1878, dissolving said old Co. and appointing Geo. W. Hered receiver, as in bill stated; but these respondents deny that said decree was entirely rendered, as in bill stated, but they show that the order appointing said receiver was affirmed by said supreme court and the remainder reversed, as is fully shown by the opinion of said court in the case of The St. Louis and Sandoval Coal & Mining Co. *vs.* Edwards *et al.*, 103 Ill., 472. These respondents admit that trials were had in said circuit court of Marion county on said original bill, supplemental bill, and cross-bill, as in bill stated, and they show to the court here that in said circuit court of Marion Co., Ill., at said several terms order, finding, and decrees were rendered and entered of record as follows, to wit:

"And now, this day, February 14th, 1881, leave is given to open depositions; and now again, on the twenty-second day of February, 1881, come the complainants, by their solicitors; also come the defendants Ozias Townsend, Mary A. McCabe, William H. Ross, John B. Mears, and Elizabeth Townsend, by their solicitors, M. Millard & Young; and this cause being ready for trial, come on to be heard as against these defendants on bill, answer of said defendants, replication thereto, exhibits, records, depositions, and oral proofs taken by E. L. Stoker, special master appointed by the court to take down same, and the court, being fully advised therein, doth order, adjudge, and decree that the original decree made at the August term, A. D. 1878, of this court in this cause stand confirmed as against said defendants so answering with costs."

78

"And now, on this day, to wit, Monday, February 12th, A. D. 1883, come the complainants, by Schaeffer and Goodnow, their solicitors, and also the defendants, by Millard & Young, their solicitors, and, this cause being ready for trial, come on for trial and was heard by the court upon the bill, answers of defendants The St. Louis and Sandoval Coal & Mining Company, Ozias Townsend, Elizabeth Townsend, Mary A. McCabe, William H. Ross, and John B. Mears, replications thereto, the default of the defendants Andrew Roll, Johnson A. Power, Albert E. Ross, Thomas B. Hill, James Sheals, James Collins, True N. Blackman, and George W. Wharton, records, exhibits, depositions and oral evidence, and letters, books thereon taken by E. L. Stoker, special master, and read on the hearing of this cause at February term, A. D. 1881, as per stipulation on file herein, and the court, having heard the evidence, takes this cause under advisement to be argued by counsel in vacation; and afterwards, to wit, July 14th, A. D. 1883, at chambers, the court hears the arguments of counsel, and, being fully advised herein, doth find that the allegations in the bill are sustained by the evidence and that the court has jurisdiction of the parties herein and

the subject-matter; that the St. Louis and Sandoval Coal & Mining Company, about the tenth day of March, A. D. 1878, ceased to prosecute the work for which it was organized, leaving debts unpaid to complainant Frank Seymour and others to the amount of two thousand one hundred dollars; that the business of said St. Louis
79 and Sandoval Coal & Mining Company was mismanaged by its officers; that said company is insolvent, and that it would be useless for said company to resume business on account of its financial embarrassments. It is therefore ordered, adjudged, and decreed by the court that the defendant The St. Louis and Sandoval Coal and Mining Company be, and the same is hereby, dissolved and for nothing esteemed in law, and the appointment of George W. Hered as receiver of said defendant, The St. Louis & Sandoval Coal & Mining Company, by the court at the August term, A. D. 1878, of this court be, and the same is hereby, approved and confirmed, and he is ordered to make further report of his actings and doings herein as such receiver.

At February term, A. D. 1885, of said circuit court of said Marion county, Ill., said receiver reported in substance his sale of said property to Isaac Main; that since Co. had no other property; that Main sold said property to the Sandoval Coal and Mining Company; that the debts of said St. Louis and Sandoval Coal & Mining Co. were all paid and discharged, and there was nothing further for him to do.

The original complainants then filed supplemental bill, making the Sandoval Coal & Mining Co. def'ts.

The Sandoval Coal & Mining Co. then answered said bill and supplemental bill, and with its answer filed its cross-bill for affirmative relief, making all the parties in the original suit defendants to the cross-bill.

1885, August 10th, being the first day of the August term of this court, this cause came on for trial. Solicitors Green & Gilbert, H. C. Goodnow, and M. Shaeffer appeared for complainant in original bill and cross-bill and N. M. Young and G. A. Koerner appeared for the def'ts The St. Louis and Sandoval Coal & Mining Company, J. B. Mears, Ozias Townsend, Elizabeth Townsend, Wm. H. Ross, and Henry Wellhoener; also appeared by answer to cross-bill the def'ts Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. N. N. Rock-
80 well. The other def'ts in the cross-bill came not, but make default, and the cross-bill is taken as confessed by such def'ts who have not answered. This cause comes on to be heard on original and supplemental bills and answers and replication and on cross-bill and the answer and replication to the answers of the St. Louis and Sandoval Coal & Mining Company, J. B. Mears, O. Townsend, E. Townsend, W. H. Ross, and Henry Wellhoener, the answer of Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell being taken as confessed by the complainants in this cross-bill, and all the evidence taken by depositions and the evidence taken before J. E. Bryan, master in chancery, as well as the evidence on a former trial on the original

bill taken down by E. L. Stoker, and sundry deeds and records of this court, and the court, having heard the same and having heard the arguments of the solicitors of the several parties, takes this cause under advisement.

August 25th, 1885, being the third Tuesday of the August term of this court, the court, having duly considered the evidence introduced in this cause, as well as the arguments of the solicitors, and being now fully advised, does find that the materialal legation- in the cross-bill herem are true, and that the allegation- in the sworn answer of Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell to said cross-bill are also true; that the following-named defendants in said cross-bill, to wit, Isaac Main, L. Noland, Jacob Lichty, C. N. Rockwell, deceased, now represented by his administratrix, Mrs L. N. Rockwell; Charles Rhinehardt, Francis H. Edwards, deceased, now represented by Mrs. Margaret E. Edwards, executrix; Henry Wellhoener, and Frank Seymore, are the only stockholders in the St. Louis and Sandoval Coal and Mining Company who paid anything on the said stock, and that they are the only parties or stockholders who have any interest in or rights to determine how the asset/s, if any, of said company, which has been dissolved by
81 the decree of this court, shall be disposed of, to whom, and for what consideration.

That the other defendants in said cross-bill, to wit, Andrew Roll, Johnson A. Power, Albert E. Ross, Jerry A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True M. Blackman, and George M. Wharton, never paid anything for their supposed stock in said St. Louis and Sandoval Coal and Mining Company, and if any such stock was issued to them or either of them it was wrongfully and fraudulently done, and neither of them had any interest in the asset/s of said company nor any rights to interfere with the disposition of such asset/s, and that they or some of them have fraudulently confederated and wrongfully used the name of said St. Louis and Sandoval Coal and Mining Company in the prosecution of suits for the possession of and injuries to what was on-e the property of said company, in total disregard *and* wishes of the valid stockholders of said company, and that they should be enjoined from using said name of said company and from prosecuting any such suits.

That at the instance and upon the motion of the said valid stockholders in said St. Louis and Sandoval Coal and Mining Company, to wit, Francis H. Edwards, Lambert Noland, Henry Wellhoener, Frank Seymour, Charles Rhinehardt, Isaac Main, Jacob Richty, and C. N. Rockwell, one George W. Herrod was by this court appointed to receive the property of said company. Under the direction and with the advice and consent of said valid stockholders, he, the said George W. Herrod, on the 28th of September, 1878, sold and conveyed to one Isaac Main all the property of said company, to wit, the south half of four acres of land north of the right of way of the O. & M. railway and adjoining Primmer's addition to the village

of Sandoval and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued to the said four acres from said
82 Primmer's addition eastward, in the west half of the north-east quarter of section 17, T. 2 north, R. — east, in Marion county, Illinois, it being the same land in bill and cross-bill described, and also the buildings, mining fixtures, and all rights to mine coal in certain lots and lands described in bill and cross-bill.

That said Isaac Main bought said property in cross-bill described at the instance and request of all the valid stockholders of the St. Louis and Sandoval Coal and Mining Company for the purpose, if possible, of selling the same for enough to pay off the indebtedness of said company, which *said* amounted to over $2,000, so as to save said valid stockholders from further liabilities from said debts, and that said Main afterwards, at their instance and request, sold and conveyed all the said property in consideration of the sum of $2,465.30, paid by the complainant in said cross-bill and said complainant, The Sandoval Coal and Mining Company; which said sum of $2,465.30 was all said property was then worth and more than it was worth for any purpose other than mining purposes after an outlay of a large sum of money to make it valuable for that purpose.

That The Sandoval Coal and Mining Company, the complainant in said cross-bill, soon after its purchase of said property from said Main, to wit, in the spring of 1879, took possession of said land and property, and with the consent and under the advice of all of said valid stockholders of said St. Louis and Sandoval Coal and Mining Company sunk a coal shaft, erected buildings and *proceeding* thereon, and expended in sinking said shaft and erection such buildings and other permanent fixtures and machinery over the sum of $25,000, all of which was done with the knowledge, consent, direction, and acquiescence of said valid stockholders, and no objection to such improvements was made or any title claimed to said property by even the insolvent or fraudulent or pretended stockholders until long after said expenditures had been made, and that such expenditures were made in good faith under the belief that the title to said property was perfect in said complainant in
83 cross-bill.

That the complainant in cross-bill owns other lands, buildings, and improvements and mining rights in the immediate vicinity of and connected with the lands, etc., in controversy in this suit, both by buildings and machinery on the surface and by works and passages underground, which would be comparatively valueless to complainant in cross-bill if its title to said two acres of land were not perfected.

It is therefore ordered, adjudged, and decreed by the court—

1st. That the defendant- in the cross-bill, Andrew Roll, Johnston A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, and George N. Wharton, are not equitable or valid stockholders in said St. Louis

and Sandoval Coal and Mining Company, and that they have no interest in the assets of said company and have no right to interfere with the application of any such assets nor to sue for the same.

2nd. That the defendants in the cross-bill, Margaret E. Edwards, as executrix of Francis A. Edwards, deceased, and Lambert Noland, Henry Wellhoener, Frank Seymour, Charles Rhinehardt, Isaac Main, Jacob Lichty, and Mrs. L. M. Rockweil, as the executrix of the estate of C. N. Rockwell, deceased, are the only equitable and valid stockholders in said St. Louis and Sandoval Coal and Moning Company, and have full right and power to dispose of all the property of said company which has been dissolved by the decree of this court in original bill on this cause at a former term of this court.

3rd. That the said equitable and valid stockholders, to wit, Margaret E. Edwards, as executrix of Francis H. Edwards, deceased; Lambert Noland, Henry Wellhoener, Frank Seymour, Charles Rhinehardt, Isaac Main, Jacob Lichty, and Mrs. L. N. Rockwell, as administratrix of the estate of C. N. Rockweil, deceased, be, and they are hereby, ordered to execute and deliver to the com-
84 plainants in the cross-bill, The Sandoval Coal and Mining Company, a valid deed of conveyance in the name of the St. Louis and Sandoval Coal & Mining Company for the said property, to wit, the south half of four acres of land on the north of the right of way of the Ohio & Mississippi railway and adjoining Primmer's addition to the town (now village) of Sandoval and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through said four acres from said Primmer's addition eastward, in the west half of the northeast quarter of section seventeen (17), T. 2 N., R. 1 east, in Marion county, Illinois; also for the mining rights and royalty in and to certain lands and lots conveyed by sundry persons to Ozias Townsend and described in deeds recorded in Record Book D D, commencing on pages 74 and 90 of deed records of said Marion county and conveyed by said Ozias Townsend to the said St. Louis and Sandoval Coal & Mining Company and by George W. Hered, as receiver, to said Isaac Main, all in Marion county, Illinois, by the 15th day of September, A. D. 1885, and in default of such deed being made and delivered as aforesaid by the day aforesaid that the master in chancery of this court execute such deed of conveyance and deliver the same to said Sandoval Coal & Mining Company.

4th. That the said St. Louis — Sandoval Coal & Mining Company, its agents and attorneys, and all other persons in its name or behalf be, and the same are hereby, perpetually restrained and enjoined from prosecuting any and all suits against the Sandoval Coal & Mining Company, either in ejectment for said property or trespass to said property, and that the ejectment suit No. forty-five of this term of this court and the suits for trespass No. 54 of this term be, and they are hereby, restrained and their prosecution perpetually

enjoined, and said suits are dismissed at the costs of the plaintiff.

It is further ordered by the court that all the costs that have accrued herein, both those of supplemental bills and cross-bill,
85 be taxed against the defendants in the original bill, and that execution may issue for the sama in the name of the complainants in the original bill.

Appeal prayed by the defendants in the cross-bill. Appeal allowed upon said defendant- in cross-bill filing within sixty days from this date, August 25th, 1885, certificate of evidence and an appeal bond in proper form in the sum of one thousand dollars, with good and sufficient security, to be approved by the clerk of this court."

Approved by—

WILLIAM H. SNYDER, *Judge.*

And these respondents rely upon these decrees and orders of the said circuit court of Marion county, Illinois, which are still in full force and unreversed, but in all things affirmed by the supreme court of Illinois, as appears from its order and opinion in the case of St. Louis & Sandoval Coal & Mining Company *et al. vs.* Sandoval Coal & Mining Company, 116 Ill., 170, as a bar to the further prosecution of this suit and as a complete defense to the complainant's amended bill of complaint; and these respondents insists that the so-called pretenses for not paying the complainant as alleged in bill are true, and these respondents deny that the respondents owe the complainant anything for services or money advanced or paid or otherwise as stated in bill, and they deny that said old company is indebted to complainant as stated in his bill, and they further deny that the complainant is entitled to the relief or any part thereof asked for in his bill of complaint.

And, having fully answered all that they are advised it is material for them to answer, they pray to be dismissed with their costs, &c.

M. SCHAEFFER, *Solicitor for Def'ts.*
CHARLES REINHARDT.
ISAAC MAIN.
LAMBERT NOLAND.
MARGARET E. EDWARDS, *Executrix.*
LUCINDA N. ROCKWELL, *Admr.*
JACOB LICHTY.
FRANK SEYMOUR.

85½ STATE OF ILLINOIS, } ss:
Marion County, }

We, the undersigned, defendants in this cause, being duly sworn, on oath say that *they* have heard read the above and foregoing answer and know the contents thereof, and that the same is true of *their* own knowledge except as to matters which are therein stated

on information and belief, and as to those matters *they* believe them to be true.

CHARLES REINHARDT.
MARGARET E. EDWARDS.
LAMBERT NOWLAND.
ISAAC MAIN.
LUCINDA N. ROCKWELL.
J. LICHTY.

Subscribed and sworn to before me this 23rd day of January, A. D. 1888.

Witness my hand and official seal.

CHAS. F. PATTERSON,
Notary Public.

[SEAL.]

Filed August 28, 1888.

J. T. JONES, *Clerk.*

86 And afterwards, to wit, on the twenty-eighth day of September of the year last aforesaid, came again the complainant, by James Carr, Esq., his solicitor, and filed in the clerk's office of said court two separate replications to the answers of the St. Louis and Sandoval Coal and Mining Company and of Charles Reinhardt and others; which replications are in the words and figures following, to wit:

In the Circuit Court of the United States for the Southern District of Illinois.

OZIAS TOWNSEND, Complainant,
vs.
THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY *et al.*, Defendants.
} In Equity. Replication.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the separate answer of the Sandoval Coal and Mining Company filed in the above-entitled cause, for replication to said answer saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

87 JAMES CARR,
Solicitor for Complainant.

JAMES CARR, *Of Counsel.*

Filed Sep. 28, 1888.

J. T. JONES, *Clerk.*

In the Circuit Court of the United States for the Southern District of Illinois.

OZIAS TOWNSEND, Complainant, *vs.* THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY *et al.*, Defendants.	In Equity. Replication.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the separate answer of Charles Reinhardt, Isaac Main, Lambert Noland, Margaret E. Edwards, Lucinda N. Rockwell, Jacob Lichty, and Frank Seymour filed in the above-entitled cause, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this: that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

88 JAMES CARR, *Of Counsel.*

JAMES CARR,
Solicitor for Complainant.

Filed Sep. 28, 1888.

J. T. JONES, *Clerk.*

Then afterwards, to wit, on the twenty-seventh day of November, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

OZIAS TOWNSEND *v.* ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et al.*	In Chancery.

This day comes the complainant, by James Carr, Esq., his solicitor, and enters his motion to appoint C. C. Cowen, Esq., special examiner to take testimony. It is ordered by the court that the hearing of said motion be set for the 7th day of December next.

Now, afterwards, to wit, on the eighth day of December, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

OZIAS TOWNSEND
v.
ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY *et al.* } In Chancery.

By consent of parties, by their solicitors, it is ordered by the court that C. C. Cowen be, and he is hereby, appointed special examiner to take, under the 67th rule in equity, the testimony in the above-entitled cause and report the same to this court.

89 In the Circuit Court of the United States for the Southern District of Illinois.

OZIAS TOWNSEND
vs.
ST. LOUIS & SANDOVAL COAL & MINING CO. *et al.* } In Chancery.

The depositions of John B. Mears, of St. Louis, Missouri; Henry Wellhoener, of St. Louis, Missouri; Charles E. Gartside, of St. Louis, Missouri; Ozias Townsend, of St. Louis, Missouri, and Lambert Nolan, Charles Reinhardt, James S. Martin, and Isaac Main, of Marion county, Illinois, witnesses of lawful age, produced, sworn, and examined upon their corporeal oath, on the 20th day of December, in the year of our Lord one thousand eight hundred and eighty-eight, at the office of James Carr, Esq., room 408, No. 421 Chestnut street, in the city of St. Louis and State of Missouri, by me, C. C. Cowen, a special examiner, duly appointed by commission issued out of the clerk's office of the circuit court of the United States for the southern district of Illinois, bearing teste in the name of James T. Jones, Esq., clerk of the said circuit court of the United States for the southern district of Illinois, with the seal of said court affixed thereto and to me directed as such examiner, for the examination of said witnesses in a certain suit and matter in controversy now pending and undetermined in the said circuit court of the United States for the southern district of Illinois, wherein Ozias Townsend is plaintiff and The St. Louis & Sandoval Coal & Mining Company *et al.* are defendants, in behalf of the said plaintiff.

90 James Carr, Esq., appearing a- solicitor for the plaintiff, and M. Schaeffer, Esq., appearing for the defendants.

The said JOHN B. MEARS, being first duly sworn and cautioned by me, C. C. Cowen, special examiner, as a witness to the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said plaintiff and defendants, so far as he should be interrogated, testified and deposed as follows:

Direct examination.

By Mr. CARR:

Q. State your name, age, residence, and occupation.

A. John B. Mears; age, a few months past 63; residence, St. Louis, Missouri; I am not engaged in any business at present.

Q. State if you were a stockholder and director in the St. Louis & Sandoval Coal and Mining Company; and, if so, state when.

A. I was; commencing in 1877—perhaps about there.

Q. Did you become a stockholder upon the organization of the company?

A. I did, sir.

Q. Do you remember when the company was organized?

A. My recollection is not clear as to the exact date; quite a number of years have elapsed and I have not charged my memory particularly with that.

Mr. SCHAEFFER: There is no controversy about that; it was in 1877.

Mr. CARR: The certificate of incorporation was dated December 12th, 1877, and the licence to organize is dated October 10th, 1877; the license to organize the corporation granted to Ozias Townsend, William Bowen, and Johnston A. Power, as commissioners, and the certificate of incorporation is dated December 12th, 1877.

91 Q. You say you were a director at the organization of the company?

A. Yes, sir.

Q. State whether you held a meeting of the board of directors at 614 N. 9th street, in the city of St. Louis, December 20th, 1877.

A. I believe we did, sir. I depend upon your memorandum there for location; it was in that vicinity.

Q. Look at the pamphlet shown you and state whether you identify it as a copy of the by-laws adopted at that meeting (handing pamphlet to witness).

A. That is a copy of the by-laws adopted at that meeting.

Q. By-laws of the St. Louis & Sandoval Coal and Mining Company?

A. Yes, sir.

Q. Does this set out the names of the officers correctly?

A. With one exception it does. My recollection is that I was elected secretary at that meeting, but failing to serve Mr. Wellhoener was subsequently chosen secretary; my recollection is that at this meeting I was chosen secretary.

Q. How long did you fill the office of secretary?

A. I did not fill it at all; I failed to serve. I perhaps officiated at one meeting or so, but relinquished the position and Mr. Wellhoener was elected.

Q. Will you state the names of the officers and directors of the company at that time?

A. Ozias Townsend, president and superintendent; and, practically, Henry Wellhoerner, secretary and treasurer; the directors were John B. Mears, James S. Sheals, and Isaac Main; and the executive committee Oziaas Townsend and John B. Mears.

Q. State if the president and secretary named there were also directors?

A. They were.

Q. How many composed the board of directors?

A. Five.

92 Q. And the persons named composed the board of directors at that time?

A. Yes, sir. Those gentlemen at first were elected directors, and then by the directors chosen to those official positions.

Q. The president, secretary, and treasurer were chosen by the board of directors?

A. Yes, sir.

Q. Was Mr. Townsend chosen as president at that meeting by the board of directors?

A. He was.

Q. State whether you fixed his salary at that time or not. And, if so, the rate of which you fixed it?

A. (Witness refers to pamphlet.) I think it was not fixed at that time, but it was some time subsequently; it may have been, but my recollection is obscure upon that particular point. I think it came up afterwards.

Q. It was not fixed at that meeting, about how soon afterwards was it fixed?

A. Perhaps at the next meeting or very soon after the first meeting; it was perhaps in the following January.

Q. State what sum you fixed it at.

A. We fixed it at $150.00 per month.

Q. State if Capt. Townsend entered upon the duties of president and *ex officio* superintendent and performed them from that time until the dissolution of the corporation?

A. He did; exclusive of all other business.

Q. State what time he devoted to the business of the corporation.

A. Quite as much of his time as business men ordinarily devote to their business and perhaps more, for his time was occupied continually in furthering the interests of the corporation.

Q. In other words, he devoted all of his time to the interests of the corporation?

A. He did.

93 Q. He worked faithfully all the time, did he?

A. Yes, sir.

Q. He devoted his energies and time to its best interests?

A. Yes, sir; he did.

Q. State whether Capt. Townsend had anything to do with getting up the corporation, and, if so, state in what respect; I mean p/em-inary to its organization on the 12th day of December, 1877.

A. The first of it I heard was from him, and the only one I heard speak about it was himself in its incipiency. I think he conceived the idea of it and carried it into execution himself alone.

Q. State when he commenced to work it up; how far back I mean before the organization—I mean its legal organization.

A. It was in the summer or autumn of 1877 that he first spoke to me about it.

Q. If you know of his doing anything looking to the organization of the company prior to December 12th, 1877, state what he did?

A. I only know of my own knowledge his conversation with me on that subject. He approached me on the subject and spoke of it as a feasable enterprise and one that would eventually be profitable and something very desirable to take hold of and carry to a successful operation.

Q. State whether he induced you to become a stockholder in the corporation?

A. It was through his representations that I became a stockholder.

Q. How long was this before the organization—before December 12th, 1877?

A. It may have been a few weeks; my recollection is not clear on that subject.

Q. State any other action he took in reference to the corporation.

A. I don't know of any of my own knowledge; I only know what he told me of the parties that he was negotiating with and interesting in the enterprise.

94 Q. Do you know of his taking any steps to securing mining rights for the proposed corporation?

A. I don't know of any to my knowledge—that is before the organization.

Q. What did you know about it after the organization?

A. I know that he secured these mining rights through his operations from his making a favorable impression upon those who had the disposition of them.

Q. I want to show the number of mining rights that he secured if you know?

A. I visited Sandoval in company with him and assisted him in the clerical work. I know that he was the man who went from party to party and secured these mining rights, brought them into the place where I was and had those rights secured to the corporation.

Q. In what way did you assist him in securing the mining rights?

A. In a clerical way.

Q. You were clerking for him, were you?

A. Yes, sir; practically.

Q. When was it that you were out there with him, I mean in securing those mining rights?

A. My memory fails me in regard to the exact date.

Q. Just look at the deed and refresh your memory from it as to the date (handing deed to witness).

A. That was in November of 1877.

Q. State the date of that deed. (Witness examines the deed.) The 10th day of November, 1877, is the date of the acknowledgement; it is executed on the same day.

Mr. SCHAEFFER: Before whom is it acknowledged?

A. Andrew Roll, justice of the peace.

Mr. CARR:

Q. Is that about the time you with him were engaged in securing mining rights?

95 A. Yes, sir; it must have been for this was executed that time.

Q. If you know of Capt. Townsend spending any money to secure these mining rights, please state it and the amount.

A. I did not know of his expe*den*ture. My opinion then was and my belief still is that the expe*den*ture was all his; that no one else spent any money in the enterprise.

Q. You mean in securing the mining rights?

A. In securing the mining rights.

Q. Do you know how much money he spent for that purpose?

A. I did not of my own knowledge.

Q. The money spent in securing the incorporation of the company, do you know who paid for that business?

A. I always understood it to have been at Mr. Townsend's expense. I did not know of my own knowledge.

Q. Look at that pamphlet or book, geological surveys (handing book to witness).

A. Do you call my attention to the map?

Q. I want you to look at it and state to the examiner what it is; look at the title page.

A. It says, "Report on Illinois Coals."

Q. Begin at the top of it.

A. "Illinois Geological Survey: Abstract of a report on Illinois coals, with descriptions and analysis and a general notice of the coal-fields (published by order of the governor), by J. C. Norwood, M. D., State geologist. Published at Chicago."

Q. State whether you ever saw that geological report before.

A. I have seen it frequently, sir.

Q. Turn to page 83 of that report.

A. I have found it.

Q. Read what it says at the top there.

A. Marion county.—Boring at Centralia: Soil, 3 feet; blue clay and sandstone, 20 feet and 6 inches; sandstone, 1 foot and
96 10 inches; blue clay (light colored), 10 feet; blue clay (dark), 55 feet 8 inches; bituminous slate, 8 inches; blue clay with gravel, 3 feet 6 inches; blue slate, 25 feet 6 inches; indurated clay, 91 feet 4 inches; limestone, 7 feet; coal, 6 feet; indurated clay, 12 feet; limestone, 6 feet; indurated clay, 83 feet 6 inches; bituminous slate, 2 feet; coal, 3 feet; limestone, 20 feet; indurated clay, 151 feet; sandstone, 25 feet; black slate, 6 feet 6 inches; indurated clay, 65 feet; ironstone with chert, 3 feet 6 inches; indurated clay, ?," aggregating "602 feet 6 inches."

Q. State whether you were induced to go into this corporation on the strength of that report in regard to the coal underlying the soil in Marion county, Illinois.

A. That certainly was the basis of my belief in regard to its existance there.

Q. State how far Sandoval is from Centralia, a place named in that report.

A. 5 or 6 miles; I have not been in Centralia except in passing

clear through, and my recollection is not distinct. It is a few miles; 5 or 6.

Q. On the Illinois Central railroad?

A. Yes, sir.

Q. State where Sandoval is located, in what county and on what railroad or railroads, if any.

A. It is located on the western branch of the Illinois Central railroad at its intersection with the Ohio & Mississippi railroad.

Q. In what county?

A. In Marion county, Illinois.

Q. State if you were present at a special meeting of the board of directors held at the East St. Louis hotel, in the city of East
97 St. Louis, State of Illinois, some time in February, 1878.

A. I was.

Q. State what other directors were present at that meeting besides yourself.

A. I believe all of the then existing board of directors were present with the exception of Isaac Main, of Sandoval, Marion county, Illinois.

Q. You say "the then existing directors;" state if the directors were the same as those whom you have already named as chosen directors at the organization of the company.

A. I think Mr. Shields was not then a director; his place had been supplied by some one else; I think Mr. Blackman, if I am not mistaken.

Q. Did Mr. Shealds resign and was Mr. Blackman appointed to fill his place?

A. Either his term had lapsed or, for some reason that I do not now recollect, he ceased to be a director; I believe he never served as a director at any of the meetings; I do not remember of ever meeting him, and whether his term had expired or whether he resigned or just how it came about I do not recollect.

Q. State the fact, then, if Mr. Blackburn was a director.

A. I believe he was; that is my recollection.

Q. State the names of the directors present at the meeting.

A. Ozias Townsend, Henry Wellhoener, T. W. Blackman, and myself, as near as I can recollect.

Q. State who called that meeting and why it came to be called at East St. Louis.

A. It was called, in pursuance of power existing under the by-laws, by a sufficient number of directors petitioning the president to call a meeting.

98 Q. Petition in writing?

A. Yes, sir.

Q. Look at sec. 1 of art. 2 of the by-laws and state whether the meeting was called under that section (handing pamphlet to witness).

A. It was called in pursuance to the powers granted by that latter clause of that section 1 of article 2.

Q. Do you know whether all the directors were notified in writing of that meeting?

A. I was; I don't know whether the others were or not.

Q. State for what purpose that meeting was called.

A. My purpose in signing the call for the meeting and being present at the meeting was mainly, in seaman phrase, to take "our bearings," to see where they were steering to, to make a sort of a guess as to where we stood. We were incurring a large liability to Mr. Townsend without the then ability to liquidate it, and it was necessary that we should, as soon as we could arrive at it, fix somethins satisfactory with regard to his pay, compensation in the organization, together with other incidental matters that might come up.

Q. State now if you passed *and* resolutions at that meeting in regard to his compensation for the services rendered in organizing the company and securing the mining rights and performing the duties of president after its organization up to the 1st of January, 1878.

Defendants' counsel objected to all these questions as to what the proceedings of the corporation were, because it is presumed that they kept a record of their proceedings, and their records are the proper evidence as to what was done by them.

Q. I will read you a copy of the resolutions passed at that meeting that we are speaking of:

99 Whereas Ozias Townsend has devoted a large share of his time and attention for the past year to the organization of the St. Louis & Sandoval Coal & Mining Company and has expended freely his money in traveling and promoting its interests and in securing for the said company large and very valuable franchises of coal and mining privileges; and whereas he has devoted his time from the inception of this enterprise and formal application for articles of association up to the 1st day of January, 1878, and for all of which no compensation has been rendered him; and whereas it is right and proper he should be paid for his labors in such behalf and should be fully reimbursed for the time and money so expended: Now, therefore, be it resolved, 1st, That in full satisfaction for such services and exp*edent*ures and for his attention to the business of this company up to and prior to the 1st day of January, 1878, the said Ozias Townsend is hereby allowed and this company binds itself to pay to him the sum of ten thousand dollars, the same to be receipted for — *his* as in full compensation for said services aforesaid, and if he shall wish to be endorsed upon the stock held by him as a member of this association and so much paid on account of calls made and to be made on such of the stock as may be held or indicated by him, and such endorsement by the secretary and treasurer of this company shall be held and accounted for as a receipt *fual* from him for calls on said stock to the amount of ten thousand dollars as aforesaid. Be it resolved, 2d, The secretary and treasurer is hereby authorized and directed to endorse upon the said stock held by said Townsend as he shall indicate payments of calls on the same to the extent aforesaid, and in the event of such

endorsement failing, then he shall have a valid claim against
100 this company to that extent aforesaid for such services hereby acknowledged to be rendered, but not otherwise. Be it resolved, 3d, That the said Townsend be required to sign *a* duplicate receipts for the reception of the amount indorsed on his stock as aforesaid, and that one, together with a copy of these resolutions attached, be retained on file by the secretary at the office, at the city of St. Louis."

A. We did.

Q. State whether you allowed him the sum of ten thousand dollars, to be paid in stock or money, as the case might be, for his services as already specified.

A. We thought it was just compensation—money earned.

Q. Was the value of his services rendered discussed by the board of directors at that meeting?

A. It was.

Q. And that is the sum that you fixed his services to be worth?

A. It was.

Q. State whether Mr. Townsend participated in the allowance of that sum or in the passage of those resolutions just read to you.

A. He did not, sir.

Q. The passage of those resolutions, then, was the free and deliberate judgment of the directors present on that occasion, with Mr. Townsend not acting?

A. It was.

Q. State whether he was present when the resolutions were passed.

A. He was not.

Q. State where he was.

A. That would be very hard to say. He was absent from the room where we held our meeting.

Q. Will you state where Capt. Townsend resided during all this time?

101 A. In the city of St. Louis, State of Missouri.

Q. State where Sandoval is located—I mean in what county and State.

A. In Marion county, State of Illinois.

Q. Was Sandoval the place where the *shaft* was to be sunk for this corporation?

A. It was.

Q. State if you know anything about his negotiating the purchase of 2 acres of ground upon which the shaft was to be sunk at Sandoval? (I will show you the original deed.)

A. It was obtained through the instrumentality of Mr. Townsend, as stated to me by Mr. Ewing, the grantor.

Q. Do you know anything about the deed for the 2 acres of ground from Samuel Ewing and wife to the St. Louis and Sandoval Coal & Mining Company in your connection with the corporation as director?

A. Yes, sir; we were familiar with it; knew of its existance.

Q. Look at the paper shown you and state whether that is the deed to the 2 acres of ground upon which the shaft was to be sunk.

A. It is.

Deed above referred to introduced in evidence by plaintiff's counsel and marked Exhibit "A" to the deposition of John B. Mears and hereto attached.

Q. Do you know of Mr. Townsend negotiating the purchase of this property?

A. Only from Mr. Ewing's statement to me, together with Mr. Townsend's statement. Mr. Ewing told me that Mr. Townsend had negotiated the purchase.

Q. Was the matter discussed in any of the meetings by the board of directors?

A. It may have been incidentally, not particularly.

102 Q. Now, state if you took any action after the obtaining of this deed in regard to the sinking of the shaft; and, if so, state what it was.

A. The contract was made with a man to sink the shaft.

Q. Do you remember the man's name?

A. Frank Seymour was the gentleman with whom the contract was made.

Q. Did he do any work under that contract in the way of sinking the shaft?

A. Yes, sir; he sunk the shaft to a considerable depth.

Q. Do you remember the depth?

A. Not exactly, but approximately 160 or 170 feet. My memory is defective in regard to those figures.

Q. Capt. Townsend subscribed for a large number of shares of stock in the corporation. State whether there was any understanding that he was to sell out that stock and pay the money arising from the sale of that stock into the treasury of the corporation or not.

A. Yes, sir; he subscribed for that stock in trust for the company, and on making a sale of that stock the money obtained for it was to be applied to the use of the company in prosecuting their business.

Q. State if you are knowing to the fact of his making any efforts to sell any of this stock to any one; and, if so, state to whom and when it was.

A. As I heard him talk with so many about it that I could not tell who all. I know particularly of his making an effort to sell stock to the late George Wharton—Capt. Wharton—and to a gentleman by the name of Manning. I think there are documents there that would refresh my memory. The dates have escaped me.

Copy of deposition of the witness at the other trial shown him.

103 WITNESS continued: That was in May, 1878. Mr. Townsend had been negotiating with Mr. Manning and Mr. Wharton for some time previous to May, 1878, and it was designed to culminate the arrangement with them at this May meeting.

Q. The arrangement for what?

A. To conclude the matter of the sale of stock to Mr. Manning and Mr. Wharton and put the things into more active operation and prosecute it to a success.

Q. State, if you remember, how much stock Mr. Wharton and Mr. Manning were to take.

A. I do not recollect.

Q. State whether it was a large or a small amount, or about how much.

A. It was a large amount. We were considered at that time quite sufficient to set everything into active operation for the mining business.

Q. When you say "set everything into active operation," do you mean to go on and pay for the sinking of the shaft?

A. Yes, sir; and to pay for all the necessary appliances for mining and elevating coal.

Q. In other words, to sink a shaft and buy all the necessary machinery to put the mine in active operation?

A. That is what I mean.

Q. For mining coal?

A. Yes, sir.

Q. Did you know Capt. George W. Wharton?

A. I knew him well.

Q. State whether he was a man of means.

A. He was a man of large means.

Q. He was able to have purchased a large amount of stock and pay for it?

104 A. He was.

Q. Did you know Mr. Manning?

A. I did.

Q. State whether he was a man of means or not.

A. He was a man of reputed means. I don't know of my own knowledge what his means were, but he handled large amounts of money.

Q. For the reputation he had state whether he was able to have bought and paid for a large amount of stock.

A. He was fully able to meet any pledge that he made.

Q. State, if you know, the reason why the sale of stock that Capt. Townsend had negotiated to Capt. Wharton and Mr. Manning was not consummated.

A. It was represented by Mr. Main and a friend of his at Sandoval that Capt. Wharton and Mr. Manning would not put any money into the stock of the concern while Mr. Townsend had the manipulation of it; that it was necessary to get rid of Mr. Townsend in order to avail the company of the money that they proposed to put into it; and on that presumption they called a meeting in East St. Louis and deposed Mr. Townsend, setting forth his ineligibility.

Q. I want you to state why these negotiations of Capt. Townsend with Capt. Wharton and Mr. Manning were not carried out.

A. It was on account of the legal steps taken by Mr. Main and others at Sandoval to dissolve the corporation.

Q. That is what prevented it?

A. Yes, sir.

Q. Legal steps taken by Isaac Main and others?

A. Yes, sir.

Q. When you speak of legal proceedings commenced by Isaac Main and others, do you allude to a suit in chancery com-
105 menced by them in the circuit court of Marion county, Illinois, against the St. Louis & Sandoval Coal & Mining Company and others?

A. Yes, sir; I allude to that.

Q. State whether you ever had any conversation with Capt. George Wharton in regard to this matter; and, if so, state what he said about consummating those negotiations, if anything.

A. He told me that he had made up his mind to take the amount of stock that was talked of at that time and pay cash for it; that he had the money in the bank. He told me, and I beleive he was telling the truth, that he had made up his mind to help the company out by taking this amount of stock that was then spoken of.

Q. State whether if he had taken this stock spoken of it would have been sufficient to have paid for sinking the shaft down to the vein of coal and paying for the necessary appliances for operating the mine as a coal mine.

A. That, with Mr. Manning's stock that hinged upon Capt. Wharton's subscription, would have been ample.

Q. Will you state fully about how Capt. Townsend performed his duties as president of the corporation from the time of the organization down to the time the corporation was dissolved?

A. He acted intelligently, industriously, earnestly, and all the time.

Q. State about how much of his time he put in attending to the business of the corporation.

A. I should say he devoted as much of his time to that as any business man devotes to his business who is in earnest about his business and wishes to prosecute it successfully.

Q. State whether he took a deep interest in the business of the corporation.

106 A. He did.

Q. State whether you had any conversation at any time with Isaac Main in regard to taking legal steps to dissolve the corporation or not; and, if so, state when and where.

A. On the day of this proposed meeting in May Isaac Main, T. W. Blackman, and Dr. Edwards, of Sandoval, met me on the street in the city of St. Louis, and the conversation that then took place was desultory, interlocutory, but that was the subject of the discussion, and they three expressed the same views in regard to the matter; but who, this, that, or the other made particular statement I could not undertake to say.

Q. What was the purpose expressed in that conversation?

A. The views they held out to me was that Capt. Wharton and his friend Manning were to take sufficient stock in the company and pay the cash for it, to put the work on a paying footing, provided

Mr. Townsend was put out of the position, but as long as Mr. Townsend was president and superintendent that Capt. Wharton and Mr. Manning would not have anything to do with it; that they would advance no money and that it was necessary to take some steps, for the life of the enterprise, to oust Mr. Townsend as president and superintendent.

Q. Did they say anything in regard to dissolving the corporation if they could not get Mr. Townsend ousted?

A. No, sir; not to me.

Q. Did they express any intention to wreck the corporation?

A. Not to me.

Q. State whether Mr. Townsend, as president of the corporation, had called a meeting to be held at the city of St. Louis?

A. He had on that day.

107 Q. What day was that?

A. That was in May, 2d day of May, 1878, I believe.

Q. Was that meeting regularly called?

A. It was.

Q. State whether there was any meeting held at the time and place specified in that call.

A. There was not a quorum of directors there.

Q. And no meeting of the board there?

A. No, sir.

Q. State whom you saw in the city of St. Louis on that day—I mean of the directors.

A. I saw all of them, unless it may have been that I did not see Mr. Wellhoener, but I think I did; I think I saw all of them on that day.

Q. Did they decline or refuse to go into the meeting?

A. Not in my hearing.

Q. Did they fail to attend the meeting at the time and place specified in the call?

A. They did.

Q. The records show that the suit in equity commenced by Isaac Main and others against the St. Louis & Sandoval Coal & Mining Company and others in the circuit court of Marion county, Illinois, was on the 27th day of June, 1878, and that George W. Herrod was appointed re*ci*ever to take possession of the property of the corporation. Now state, if you know, the condition and value of that property at that time; and, if so, state what, in your judgment, that property was worth at a fair cash valuation.

A. The shaft had been sunk to this depth, 114 feet, I think, and the prospects for a successful vein of coal was good as it had

108 ever been. It was almost a certainty, and the demand for coal was good. The shaft had been sunk at a place where a ready market could be had for all the coal that could be taken out, and the prospect was that the vein was practically inexhaust*a*ble—very large—and I would think I was placing a very low estimate on the cash value of our franchise at that time at $75,000.

Q. When you speak of the franchise secured to the corporation do

you include in that the mining rights which Mr. Townsend had secured for it?

A. Yes, sir.

Q. About what number acres of land were there embraced in these mining rights?

A. My recollection is not distinct as to the number of acres. It was underlying nearly the whole of the corporate limits of the town of Sandoval—several hundred—400, I think.

Q. 436 mining rights claimed to have been secured. Did the quantity of acres cover all those mining rights, is what I want to know?

A. My recollection is not distinct. I rely altogether on the record in those matters. I was there at the time that the mining rights were secured. I may have known then, but I do not remember now.

Q. State whether you considered those mining rights of value; and, if so, to what extent?

A. The franchises would have been practically valueless without them, the chief value lay in them.

Q. Did those mining rights cover the land adjacent to where the shaft was being sunk, all the adjacent property?

A. Yes, sir; all property contiguous.

Q. In other words, they were convenient to the shaft?

A. Yes, sir.

109 Q. For mining purposes, I mean?

A. Yes, sir.

Q. Had you anything to do with the organization of the St. Louis & Sandoval Coal & Mining Company; had you known anything about its organization?

A. Not only the record; I had nothing to do with it personally.

Q. If Capt. Townsend had not been interfered with by this suit of Isaac Main and others, what is your opinion in regard to his carrying the corporation through successfully, I mean to a successful business?

Objected to by defendant's council.

A. I have no doubt but that he would have succeeded in carrying it through successfully to a paying issue.

Q. You believe that he would have raised money enough out of the stock in his name to have carried it through successfully, do you?

A. I have no doubt of it.

Q. State whether at the meeting that was to have been held in the city of St. Louis on the 2d day of May, 1878, Isaac Main expressed or showed that he was unfriendly to Capt. Townsend as the president and chief executive officer of this corporation or not.

A. Oh, he was very much out with Mr. Townsend, if I may use that expression; he expressed himself in very bitter terms against Mr. Townsend and the course he had taken.

Q. When Capt. Townsend subscribed for a large amount of the stock was it with the understanding that it was simply in trust, and

that he was to sell it out to such persons as he could and turn the money arising from the sale into the treasury of the corporation?

A. It was with that understanding, definately.

110 Q. You have made some allusion to a meeting held by Mr. Main and others at East St. Louis afterwards to depose Capt. Townsend as president and superintendent.

A. Yes, sir.

Q. By what authority was that meeting held?

A. It was the voluntary will of those who met together, I presume; I know of nothing else.

Q. Were you present at that meeting?

A. I was.

Q. The president never called the meeting, did he, under the by-laws?

A. He did not.

Q. Was there anybody else authorized by the by-laws to call that meeting.

A. Not that I am aware of.

Q. Was that meeting held under any authority of any by-law at all?

A. Not to my knowledge; I know of no such by-law.

Q. Under the by-laws no meeting could be held as a regular meeting unless it was called by the president either on his own motion or by the written request of 3 of the directors?

A. Of course it could not.

Q. And this meeting was not called at the written request of 3 of the directors or by the president on his own motion?

A. It was not.

Q. Mr. Main's whole effort was to have Mr. Townsend's deposition as president and superintendent of the corporation, was it?

A. That seemed to be his object, the main purpose.

Q. State whether you were examined as a witness in the case of Francis H. Edwards & others *vs.* The St. Louis & Sandoval Coal & Mining Company & Others in the circuit court of Marion county, Illinois.

111 A. I was.

Q. State whether you were examined in regard to the value of the services rendered by the plaintiff, Ozias Townsend, in getting the St. Louis & Sandoval Coal & Mining Company organized as a corporation under the laws of the State of Illinois, and also in getting and securing certain mining rights to himself as trustee for the use and benefit of said corporation.

A. I do not now recollect.

Q. Look at the testimony delivered at the trial in that case and refresh your memory (handing same to witness).

A. I see nothing in this deposition to indicate that I was examined on that point.

Q. State whether you were examined upon the question as to whether the salary and expenses of the plaintiff as president of the St. Louis & Sandoval Coal & Mining Company had been paid or not, to wit, his salary at $150.00 per month commencing on the

1st day of January, 1878, and continuing so long as he acted as president of the St. Louis & Sandoval Coal & Mining Company.

A. I was examined with regard to his salary, but I think nothing was said in regard to his expenses. As to the payment of his salary, I was examined in regard to that. I mean payment instead of the fact of the salary and expenses.

Q. State what your testimony was in regard to that point.

A. I said his salary had not been paid.

Q. Had his traveling expenses been paid?

A. I think I was not examined in regard to his expenses outside of his salary. I have no recollection in regard to his expenses. I would add that nothing had been paid on his salary except so far as assessments that had been made would enter as a *per contra* against the salary, as per payment on the salary.

112 Q. Assessments against his stock?

A. Yes, sir; against his stock subscribed.

Q. Had he been allowed credit on his stock in any way in payment of his salary?

A. That I could not say.

Q. You do not know of any?

A. No, sir.

Q. What were the main facts upon which you testifi*y*d as a witness in that case?

A. I was examined something in regard to the inception and organization of the company, and mainly with regard to this——

Q. The allowance of $10,000, mainly, that was it, that was the main point, was it; the board of directors allowing $10,000 to Mr. Townsend for his services?

A. I did not look upon that as the main feature; they seemed to dwell more particularly on the examination on this attempt to oust Mr. Townsend and wreck the company.

Q. Was not that the ground worked upon, which they based the suit for that purpose?

Objected to by defendants' counsel.

A. That I could not say, sir.

Cross-examination.

By Mr. SCHAEFFER:

Q. The St. Louis & Sandoval Coal & Mining Company you say was organized in 1877, and a board of directors was elected; what was the term of the board of directors, if you know?

A. For one year, I believe, or until their successors were elected.

Q. How often, if you remember, did the board of directors meet?

113 A. They sometimes meet quite frequently, and at other times only at long intervals, just as *im*mergencies arose and required them to meet.

Q. They kept a record of their proceedings, I suppose?

A. Yes, sir.

Q. Do you know where that record is?

A. I do not, sir.

Q. The meeting held in January, 1878, that fixed the salary of Mr. Townsend, was held in St. Louis?

A. I believe it was, sir.

Q. Were all the directors present?

A. All except Mr. Shields.

Q. Coming down to this meeting in May, you say there was a call for a meeting in St. Louis here on the 2d day of May, 1878; the directors were all here, were they?

A. They were all in St. Louis; yes, sir.

Q. They did not meet, you say, at the place at which the meeting was called?

A. Not a sufficient number of them to have a meeting; Mr. Townsend and myself were the only ones there.

Q. You then went over to East St. Louis and held a meeting there, did you?

A. In the afternoon of that day I went over with Mr. Main, Dr. Edwards, and Mr. Blackman.

Q. Dr. Edwards was not a director, was he?

A. No, sir.

Q. How many of the directors went over?

A. Mr. Main, Mr. Blackman, Mr. Wellhoener, and myself went over.

Q. They were all there except Mr. Townsend?

A. Yes, sir; I believe Mr. Wellhoener was there. My
114 recollection is that he was there.

Q. At that meeting you attempted to reorganize the company?

A. An attempt was made to reorganize the company.

Q. And the meeting broke up in rather — unsatisfactory way, did it?

A. Very unsatisfactory to me, sir.

Q. Mr. Wharton, was he at that meeting?

A. He was there.

Q. Had he any stock?

A. No, sir.

Q. Had he refused to take any stock before that meeting?

A. No, sir; the expectation was that he would take this stock that I spoke of before he had given a certified check, I believe, for the amount of stock, but the certificates had not been issued to him at that time, so he was not really a stockholder.

Q. Had you not received his certified check before that meeting was held?

A. Not to my knowledge.

Q. You were a party in the suit, I believe, of Francis H. Edwards *et al. vs.* The St. Louis & Sandoval Coal & Mining Company *et al.*, in the circuit court of Marion county, Illinois?

A. Yes, sir.

Q. And were a witness there?

A. Yes, sir.

Q. In the investigation there when you testified to Mr. Town-

send's services and the money expended and so on, did you have reference to the same things that you are talking about now, of the same services, the same money and all?

A. I presume so.

115 Q. You say that there was an understanding at that time that Mr. Townsend subscribed—that is, the original subscription—or do you remember the amount he subscribed?

A. I think 10 shares, sir. I think his original subscription was 10 shares.

Q. Did he subscribe for that $39,300 worth of stock before the certificate of incorporation was issued by the secretary of state?

A. My recollection is not clear on that subject.

Q. You say there was an understanding that he should hold that stock in trust?

A. Not his original subscription of stock, but the residue; the latter stock that he subscribed was subscribed in trust for the benefit of the corporation, distinct from his individual subscription which he intended to hold.

Q. Was not the full amount of $50,000 capital stock subscribed before the certificate of incorporation was issued?

A. I think not, sir.

Q. Between whom was there an understanding at the time that Mr. Townsend should hold that stock in trust and dispose of it for the benefit of the corporation?

A. Between him and the other board of directors.

Q. Will you please state as succinctly and definitely as you can just exactly what services Mr. Townsend performed as president of the corporation?

A. He called most of the meetings that were held on his own motion; he presided at those meetings; he traveled back and forth between here and Sandoval in the interests of the corporation in securing the mining rights and other valuable franchises, the place on which the pit was sunk, and in endeavoring to make

116 sales of stock to raise means to prosecute the work.

Q. How often did he go to Sandoval after he was elected president?

A. That I could not tell you definitely; quite frequently, however. I know this: that he went so frequently that he thought it would be economy for the company to make his residence in Sandoval at that time.

Q. Do you remember whether he was ever at Sandoval after the 2d of May, 1878?

A. Yes, sir; he was there afterwards; how many times I could not state.

Q. About when?

A. My recollection is indistinct on that subject. I heard of his having been there from time to time, but how often and just when I could not recollect.

Q. Do you know whether or not he was there at any time after he was elected president of the company, of your own knowledge?

A. That I could not know of my own knowledge without hav-

ing been with him, only at this time when we secured those mining rights.

Q. How long were you and him there then?

A. Several days; 3 or 4 days.

Q. Did not Andrew Roll and Dr. Edwards and Lambert Nolan and Isaac Main go around and secure those mining rights?

A. I don't know that they did.

Q. Do you know that Mr. Townsend went around to see anybody?

A. I know he did.

Q. Who did he go to see?

A. I could not recollect the individuals, there are so many of them, but I know they came frequently into the room where I was occupied in writing, inquiring for Mr. Townsend. I think those gentlemen you have named used their influences with them
117 to induce them to grant these mining rights; I have no doubt of that.

Q. How do you estimate that property at the time it went into the hands of the receiver to be worth $75,000?

A. How?

Q. Yes, sir.

A. I think that a business calculation demonstrates the fact that it was worth fully that amount; the coal was a good mine—6 feet of coal—and of a good quality and well located.

Q. But that was not reached then?

A. No, sir.

Q. I mean in the condition it was then at the time?

A. It was just about as near reached, Judge, as if you were invited out to dinner and you smelt the dinner from the dining-room; you would be pretty sure of getting that dinner; it was simply a matter of getting the money and getting it.

Q. That is to say, it would require the outlay of considerable money before it would be worth anything?

A. That is very true, and it was worthless without the mining franchise already obtained, even after that pit was sunk.

Q. Do you remember the condition upon which the mining rights were conveyed?

A. That is set forth in the deed, I presume; it is a matter of record.

Q. You understood it to be that the shaft had to be sunk to a paying vein of coal within 2 years from the time that the mining rights were secured?

A. I am aware of that fact, sir.

Redirect examination.

By Mr. CARR:

118 Q. Could the shaft have been sunk within the 2 years from the time the mining rights were secured if the work had been prosecuted with reasonable diligence?

A. I am not a mining expert, but I am satisfied that it could have been from my knowledge of mining.

Q. When you made the contract with Frank Seymour to sink the shaft down to the coal vein was the matter discussed with the board of directors as to the length of time it would take to sink the shaft?

A. Yes, sir; it was talked over.

Q. What conclusion was arrived at?

A. That he would have ample time to sink it as far as necessary in order to get the coal within the time specified.

Q. When you accompanied Capt. Townsend to Sandoval to attend to the business of the corporation and in securing the mining rights who paid your expenses?

A. Mr. Townsend.

Q. Do you know about how much was paid out for your expenses whilst you were out on this business?

A. I do not, sir.

Q. Can you approximate it?

A. I would not have taken $50.00 in cash and have done what I did.

Q. I mean traveling expenses.

A. The traveling expenses and incidentals; my board had to be paid while I was there and the railroad fare.

Q. Have you any idea how much he had to necessarily *to* pay out for you?

A. No, sir; we boarded at Mr. Roll's hotel and lived well; I don't know how much he charged for it, but he had a right to
119 charge liberally because we lived liberally.

Q. Capt. Townsend paid your traveling expenses?

A. He paid all that was incurred, I bel*ie*ve. So far no demand has ever been made on me for it, and I know the railroad fare was cash.

Q. Do you know how much the railroad fare was from St. Louis to Sandoval?

A. No, sir.

Q. You lived in St. Louis then, did you?

A. Yes, sir; and do now.

Q. Capt. Townsend lived in St. Louis then and has ever since?

A. Yes, sir.

Q. He is still living there, is he?

A. Yes, sir.

Q. In procuring the certificate of incorporation did you accompany Mr. Townsend up to Springfield or anywhere else?

A. No, sir.

Q. Do you know who paid for printing the by-laws of the corporation?

A. Only from Mr. Townsend's statement to the board of directors—that is, that he paid it himself.

Q. Did you know how much it was?

A. No, sir.

Q. It is put down at $25.00.

A. I think that is a very reasonable charge.

Q. Who paid for the books and seal of the corporation, if you know?

A. My belief and opinion is that Mr. Townsend paid it.

Q. That is put down at $25.00. What do you say to that charge?

A. That is little enough.

Q. Who paid for recording the deeds for the mining rights?

A. Mr. Townsend.

120 Q. Here is $5.00 for the abstract of title for the two acres of ground conveyed by Samuel Ewing and wife to the corporation. Do you know who paid for that?

A. Mr. Townsend.

Q. Who paid for advertising notices of the meetings of directors and stockholders—annual meetings, in other words?

A. Mr. Townsend.

Q. I see $35.00 is charged for that. What do you say to that charge?

A. I think it was within the limits of reason.

Q. Was anything said in the board of directors about who paid the fees for getting the corporation duly incorporated?

A. It was frequently mentioned as having been liquidated by Mr. Townsend, who stood behind in these financial matters altogether.

Q. Did he make frequent trips to St. Louis over to Sandoval and around on business for the company, do you know?

A. He has told me of very frequent trips that he made; how many and on what occassion I cannot recollect, but I know from his statements to me they were very frequent.

Q. Was the matter talked over in the board of directors?

A. Yes, sir.

Q. About the trips that he made and the money that he paid out?

A. Yes, sir; and his statements were unquestioned.

Q. Did he report to each meeting of the board of directors how much money he had laid out and expended for traveling expenses and other objects for the benefit of the corporation?

A. If not at each meeting, he did from time to time as the matter came up. I could not say that he made a report at each meeting; perhaps there may have been some omission, but he made full report from time to time of what he was doing.

121 Q. Do you know of Mr. Townsend making a trip to Indiana to examine machinery there for the company?

A. He told me of it after his return. I did not know of it before he went, I think. He may have spoken of it incidentally, but I knew of it definitely after his return.

Q. Was it spoken of in the board of directors?

A. Yes, sir.

Q. Did he take somebody with him to assist in the selection of this machinery?

A. Yes, sir; he took an expert machinist along.

Q. Do you know who paid the expenses of that trip?

A. I believe Mr. Townsend did.

Q. He charges $65.00 for that. What do you say to that charge for his expenses and for the expert that went with him?

A. I think it is reasonable, as such men—machinists—are generally very high-priced articles, experts in machinery.

Q. Do you know of his securing the services of surveyors to go to Sandoval and examine the ground for the proper place to locate the shaft?

A. It was spoken of. He told me of it.

Q. Was that spoken of in the board of directors?

A. I believe it was, sir.

Q. Do you know how much that cost?

A. I do not, sir.

Q. Do you know about his making frequent trips to Sandoval from St. Louis after the 1st of January, 1878, and so long as the business of the company was being carried on and it was necessary to look after it?

A. Yes, sir; he reported to us from time to time that he
122 had been there, but how frequent I could not now recollect, but a good many times.

Q. Did he give it all the attention that appeared to be necessary?

A. I think so.

Signature waived by agreement of council.

Recess was here taken until 2 o'clock p. m.

After Recess.

The said HENRY WELLHOENER, being first duly sworn and cautioned by me, C. C. Cowen, special examiner, as a witness to the said cause previous to the commencement of his examination to testify to the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows:

Direct examination.

By Mr. CARR:

Q. Please state your name, age, residence, and occupation?

A. My name is Henry Wellhoener; age, 54; residence 1310 Warren street, St. Louis, Missouri, and I work in a box factory.

Q. State whether you were a stockholder and director and secretary of the St. Louis & Sandoval Coal & Mining Company?

A. I was.

Q. Did you go in at the organization of the company?

A. I did.

Q. Do you remember the date of the certificate of incorporation?

A. No, sir; I do not remember the date.

Mr. CARR: It is the date that is put down in here, 12th day of December, 1877 (showing pamphlet to witness).

123 Q. Will you state the names of the directors at the time of the organization of the company?

A. There was Ozias Townsend, Henry Wellhoener, myself; John B. Mears, James Shealds, and Isaac Main.

Q. State the names of the president, secretary and treasurer, and the executive committee.

A. The president was Ozias Townsend, and the name of the secretary and treasurer was Henry Wellhoener, and the executive committee was Ozias Townsend and John B. Mears.

Q. State how long you continued to act as secretary and treasurer of the corporation.

A. It was about 6 weeks after the company had organized when I got the position of secretary.

Q. And treasurer, too?

A. And treasurer.

Q. They acted together did they, in the same person?

A. Yes, sir.

Q. State how long you continued to act as secretary and treasurer.

A. I continued from that time until May 2d when the last meeting was held over in East St. Louis.

Q. Do you know the names of the stockholders—those who took stock in the company either by subscription or purchase?

A. I know some of them.

Q. State the names and the number of shares.

A. There was Isaac Main had 10 shares, so far as I know; Dr. Francis Edwards, 5 shares; Charles Reinhardt, 5 shares; Lambert Nolan, 1 share; Jacob Litchty, 2 shares; C. N. Rockwell, 3 shares; Andrew Roll, 2 shares; Johnston A. Power, 2 shares; Henry Wellhoener, 50 shares; Albert Ross, 1 share; Mary McCabe, 10 shares; Thomas B. Hill, 1 share; James Shields, 10 shares; James
124 Collins, 5 shares; John B. Mears, 2 shares, and Ozias Townsend, 391 shares.

Q. Is that correct about Mr. Townsend's shares?

A. That is about right, the number of shares.

Q. Do you remember about Frank Seymour taking 2 shares?

A. Yes, sir; he took them afterwards. I don't know when he took them, but I know he took two shares.

Q. State whether the plaintiff, Ozias Townsend, was chosen director by the board of directors; and, if so, when.

A. Mr. Townsend was chosen a director at the first meeting held at East St. Louis.

Q. After the organization of the company?

A. That was the organization of the company that day and when the election took place.

Q. Where?

A. At East St. Louis.

Q. Was it a stockholders' meeting?

A. Yes, sir.

Q. After the organization of the company?

A. It was done that day.

Q. What was the date of that meeting?

A. I think it was the 8th of December, 1877.

Q. The other persons that you have mentioned as directors were likewise chosen at that meeting as directors, were they?

A. Yes, sir.

Q. There were 5 directors in the corporation?

A. Yes, sir.

Q. You have named them all, have you?

A. Yes, sir.

125 Q. By whom was Ozias Townsend chosen president of the corporation, and when?

A. By the board of directors, after the stockholders' meeting was over. The board met right away after that and elected officers.

Q. And elected Ozias Townsend president and yourself treasurer and secretary?

A. John B. Mears was elected secretary and treasurer, and he acted about 6 weeks.

Q. State when and at what amount the salary of the president and *ex officio* superintendent was fixed by the directors.

A. The amount of salary was fixed at $150 per month, but I do not recollect the date very well yet; I think it was the fore part of January of 1878.

Q. That they fixed the salary?

A. Yes, sir; at the meeting held at No. 614 N. 9th street, in the city of St. Louis.

Q. Were his expenses to be paid when out on the business of the company?

A. It was not acted upon at that meeting—not to my knowledge.

Q. Was there at any time any resolution by the directors that they would pay his expenses whilst away from home on the business of the company?

A. There was some time after that. It was agreed upon by the board of directors that the necessary traveling expenses should be paid out of the funds of the corporation.

Q. State whether the directors adpted a code of by-laws for the government of the corporation; and, if so, state when and where they adopted that code.

A. The board of directors adopted these by-laws at some meeting. I think it was the meeting at the same time the contract was—

[No folio 126, but a duplicate of folio 127.]

127 Q. State whether you appointed True W. Blackman as a director.

A. We did; we voted for him.

Q. State how you came to attend the meeting of the board of directors; state how you were notified.

A. By notice of the president.

Q. In writing?

A. No, sir; not in writing. He came to me—came past my place of business there, at that time at 803 N. 4th street. It happened many times that he came there. Mr. Townsend came there most every day during that time.

Q. He spoke to you personally?

A. Yes, sir.

Q. And you promised to attend?

A. Yes, sir.

Q. Had you requested the president to call that special meeting—you as one of the directors?

A. I had not requested him.

Q. The proceedings of that meeting show that the directors passed a series of resolutions allowing the plaintiff $10,000, to be credited on stock or, if the stock failed to be paid, in money, for his services in organization of the corporation, securing the mining rights to the corporation, and attending to the business of the corporation after it was organized up to the 1st day of January, 1878. State whether you passed those resolutions making that allowance.

A. Mr. Townsend came to my place of business when it was about getting near that the money would be needed, trying his ability to get in more stockholders to raise more money, and he told me at that time that several parties were waiting that wanted
128 to see if there was any value to that property, and they would not come unless it was shown that there was some value there, and that he had consulted a lawyer, Mr. Blackman, and that they made up this to show the value, and making this $10,000 agreement so that other folks could see that there were some sort of value there, so that they would not risk their money for nothing, and on that behalf these resolutions were exhibited at that time to the board of directors at that meeting; it was all written up beforehand by Lawyer Blackman and made such a good-looking view of it that the board of directors accepted it, and, while the smallest amount of this stock was already taken, I thought myself it was better to go ahead than to keep standing there; that we had better go ahead and do something; so while the smallest amount of stock, as I have stated, had been taken and the biggest amount had to come yet, I thought it was one way as long as it was broad the other way. Mr. Townsend charged a 10 per cent. entrance fee from anybody that joined the company as a stockholder. I thought as it was as long one way as it was broad the other, I had to pay 10 per cent. entrance fee on my subscription of stock to Mr. Townsend and in order to share myself even with those who were coming in he gave me an order back for that money which I had paid him to the amount of $5,000.00. I think that is about all the question.

Q. I will repeat the question. The proceedings of that meeting show that the directors passed a series of resolutions allowing the plaintiff $10,000, to be credited on stock, or, if the stock failed to be paid, in money for his services in organizing the corporation, secur-

ing the mining rights to the corporation, and attending to the business of the corporation after it was organized up to the 1st day of January, 1878. State why you passed those resolutions
129 making that allowance.

A. It is not in the resolution in that way, that if the stock should fail it is to be paid in money.

Q. (Resolution read over to witness.) The first point was the $10,000 to be endorsed on his stock if he desired it, and if the stock for any reason failed the company was to pay him $10,000 in money; that is the way that the resolution reads; that is the purport. State why you passed that resolution making that allowance.

A. I have stated that; at least I think I have stated it. I did not state why the board of directors did it.

The above question was repeated to the witness, who is asked to state why they made that allowance of $10,000.

A. I think I have already stated it. I don't know as I can state it any clearer than I have.

Q. What was the consideration of making the allowance of $10,000 to the plaintiff? A. As the resolution reads, what do you say?

A. That part I have answered.

Q. Was the allowance of $10,000 to pay the plaintiff for his services rendered prior to the organization of the company and between the time of its organization on the 12th day of December, 1877, and the 1st day of January, 1878?

A. That was my understanding of it, that it was for that time before the company was organized.

Q. What services did you understand that the plaintiff had rendered for the benefit of the company prior to its organization?

130 A. Securing the mining rights and for traveling expenses that he had incurred prior to the organization of the company and his services after getting the company incorporated and the fees it would cost to pay for the same.

Q. When did he commence working up this enterprise which resulted in the incorporation of this company?

A. During the summer some time in 1877 and until late in the fall.

Q. Of the same year?

A. Yes, sir.

Q. You have given the names of the directors who were present at the meeting and who passed those resolutions. Mr. Townsend was one of the directors. When these resolutions were passed, state where Mr. Townsend was, whether he was in the room with the board of directors or out of the room.

A. We were around considerable, all 4 of us, in East St. Louis, in the hotel there. Mr. Townsend was present.

Q. When the resolutions were adopted, I mean; when the vote was taken was he in the room?

A. Yes, sir; in the room, sitting there.

Q. Are you sure of that?

A. Yes, sir; I am sure of that.

Q. Mr. Mears has testified that he went out of the room when the vote was taken.

A. I heard it.

Q. You think not?

A. I think not; I am pretty sure.

Q. Did he vote on the adoption of these resolutions?

A. No, sir.

131 Q. Did he participate in the adoption of these resolutions in any way?

A. I suppose he liked it.

Q. You mean he wanted the resolutions adopted?

A. Certainly.

Q. Did he or not take any part in the adoption of the resolution?

A. No, sir; he did not.

Q. Did you act on your judgment in regard to the propriety of adopting these resolutions at the time?

A. I think I used my judgment considerable.

Q. State whether your judgment when you adopted these resolutions approved of your action.

A. I don't get the meaning of that.

Q. You were in favor of adopting these resolutions, were you?

A. Yes, sir.

Q. And you voted in favor of adopting them?

A. I did.

Q. You were satisfied with the resolutions then, were you?

A. I was.

Q. At that time did you think it was right to allow the $10,000 for his previous services?

A. Yes, sir; I thought at that time that it was right; I must have or would not have voted for it.

Q. You have named the stockholders in the corporation. I will get you to state now where they reside—I mean the stockholders.

A. Isaac Main, Lambert Nolan, C. N. Rockwell, Andrew Roll, Charles Reinhardt, Francis H. Edwards, and Frank Seymour resided in Illinois; the other stockholders heretofore named resided in the city of St. Louis, State of Missouri.

132 Q. Do you know George Wharton?

A. Yes, sir.

Q. Is he dead?

A. I have heard so.

Q. How long since he has died?

A. I don't know when he died.

Q. You know where the shaft on the 2 acres of ground is located, do you?

A. Yes, sir; I do.

Q. At Sandoval, Marion county, Illinois?

A. Yes, sir.

Q. Were you one of the directors who participated in making the contract with Frank Seymour to sink the shaft?

A. I was.

Q. What is the date of that contract; when did you make it with him?

A. I don't recollect the date any more, but I think it was in January, 1878.

Q. Was it the 10th of January, 1878, the date of the contract with Frank Seymour?

A. I don't remember that.

Q. That is about the date of it, is it?

A. It may be.

Q. What length of time did he have in which to sink the shaft?

A. The consideration was 11 months.

Q. From the date of the making of the contract?

A. From the time he commenced sinking the shaft.

Q. Or was it from the date of the contract?

A. No, sir; not from the date of the contract.

Q. When was he to commence sinking it?

A. He was to commence in January, 1878.

133 Q. How often were you over at the place where this shaft was to be sunk?

A. I was over there at the time when the place was selected to sink the shaft on, and prior to that time I was there to help secure these mining rights.

Q. Along with the plaintiff?

A. Yes, sir.

Q. State how many times you were over there.

A. I was out there in March again. I think, as near as I can recollect, I was out there at that time 4 times in all.

Q. You know the property over there, then, do you?

A. I do.

Q. From whom was the deed of this property obtained—the deed to the 2 acres of ground that the shaft was sunk on?

A. From Samuel Ewing and wife.

Q. Did the plaintiff negotiate for the purchase of that 2 acres of ground from Samuel Ewing and wife? Did he make the bargain for it?

A. Yes, sir; Mr. Townsend made the bargain for it.

Q. How much was paid for it?

A. $200.00.

Q. Who paid that money?

A. I paid $164 of it and Isaac Main paid $36.00. That is where the money came from.

Q. State when you paid it.

A. I paid it the same time when I paid Seymour, which was on the 23d day of February—that is, $64.00—and the $100 was paid in January, and not dated.

134 Q. Was that deed delivered to you on that day (deed from Samuel Ewing and wife to the corporation, dated January 9th, 1878, and acknowledged receipt of the purchase-money, $200, and which deed is marked Exhibit "A" to John B. Mears' deposition, shown witness)?

A. I don't know as I ever had it in my possession.

Q. To whom was the deed delivered?

A. I think it was delivered to Mr. Townsend.

Q. Was the purchase-money named in that deed paid at the time that deed bears date?

A. The $100 may have been handed out by Mr. Townsend, but originally it came out of my pocket. The $100 may have been handed to Mr. Ewing by Mr. Townsend, but the $100 came out of my pocket.

Q. How did it come out of your pocket? Did you pay it to Mr. Ewing yourself?

A. The last $64.00 I handed to Mr. Ewing in Isaac Mains' store and the $100 came out of my pocket, although I may have handed it to Mr. Townsend, and Mr. Townsend may have handed it to Mr. Ewing. About that I won't say positively, but I am sure it came out of my pocket.

Q. The deed was not delivered to you, you say. Why do you say that the $100 came out of your pocket when it was paid by Mr. Townsend?

A. Because then I handed it to Mr. Townsend, so that he would have the money.

Q. How do you know you handed him the money?

A. Because he was there so many times. Prior to that time I had given Mr. Townsend money to help secure the mining rights.

Q. How do you know that $100 you paid to Mr. Townsend was paid on that deed—on that land?

A. I know that was all.

Q. Were you present and did you see it paid?

135 A. That I don't know.

Q. You don't know that the $100.00 that you claim as paid on that land was really paid on it?

A. I should think if it had not been paid that they would have made a request for it.

Q. Do you know that the $100.00 that you handed to Mr. Townsend was the $100.00 that was paid on that land or not?

A. They were paid.

Q. Do you know that; did you see it paid?

A. Mr. Townsend told me himself if I had not been there when he handed that money over to Mr. Ewing.

Q. Did Mr. Townsend pay the money back to you?

A. No, sir.

Q. Did you ever get it back?

A. No, sir; I never got it back.

Q. Does the company owe you yet for it?

A. Yes, sir, although I have not put in any claim.

Q. You are willing to let the $100.00 go?

A. I suppose I could never get it back again, so I have kept still and said nothing.

Q. You don't know, then, that the $100.00 that you let Mr. Townsend have went to pay for this land?

A. It did.

Q. You did not see it paid?

A. How many times will I have to answer that question?

Q. How did it come that the deed was delivered when the purchase-money was not all paid?

A. The balance was not paid; there was a note given for it by the secretary and president at that time.

136 Q. What has become of that note?

A. I know I got it when I paid that last money to Mr. Ewing. I got the note from him, and maybe I have got it yet in my house.

Q. Was that $64.00 your money?

A. Yes, sir.

Q. You advanced that?

A. Yes, sir.

Q. Did you ever get that back?

A. No, sir.

Q. Who was present when you paid that $64.00 to Mr. Ewing?

A. We were in Isaac Main's store.

Q. Anybody there beside you and Mr. Ewing?

A. Isaac Main was there, too.

Q. Did he see it paid?

A. I suppose so.

Q. Are you sure that he saw it paid?

A. No, sir; but I suppose so, as he made a request to him for more money.

Q. You say that Mr. Main paid $36.00 on this land?

A. Yes, sir; when I paid the first month's work for Mr. Seymour.

Q. When was that?

A. According to my recollection it was the 23d of February, but that may not be exactly correct. I have had it in mind that it was the 10th day of March.

Q. Did not Mr. Townsend give you an order on Isaac Main for that money?

A. He gave me an order for $50.00 for 5 shares of stock that Isaac Main had subscribed for, and Mr. Townsend claimed 10 per cent. entrance fee on that, and he gave me an order of $50.00 on

137 Mr. Main, and Mr. Main did not pay all this $50.00; he paid a portion of it, and whatever Mr. Main paid me on that order I credited it on account of Mr. Townsend's books of the company, whatever Mr. Main paid me.

Q. Was that payment of Mr. Main's stock?

A. That was so-called entrance fee at 10 per cent.

Q. Did Mr. Main owe Mr. Townsend on any other account?

A. Only that; I don't know that he owed him anything else.

Q. When you went there to make that first payment to Mr. Seymour did Mr. Townsend give you $100 of his own money to pay on that land?

A. No, sir.

Q. Did he give you $100 for any purpose?

A. No, sir.

Q. He did not?

A. No, sir.

Q. Where did you get your money to pay Frank Seymour?

A. I took the money from my own money along, enough so that I had enough to pay Mr. Seymour for that first payment.

Q. It was your money, was it?

A. Yes, sir.

Q. Did Mr. Townsend perform his duties faithfully to the company whilst he was acting as president?

A. I could not put any blame on that in any shape or form. I think he acted as faithfully as a man could do during that time.

Q. He worked for the best interests of the company so far as he could, did he?

A. I think so.

Q. Did he give all his time and attention to the business of the company after its organization?

138 A. So far as my knowledge goes, yes, sir.

Q. What do you say that property was worth when it was taken away from the company and put into the hands of George W. Herrod as receiver?

A. That is a hard question on my part. I could not very well state the facts as to what it was worth at that time.

Q. Give us your best judgment of its value at that time; it is a matter of judgment and opinion.

A. I don't know as I could answer what it was worth at that present time, but I will state this: My best knowledge and belief—what I believe today is that if the shaft was completed it would have cost, according to the contract, the machinery required therefor, in the neighborhood from $18,000 to $20,000; and if the shaft had been completed I always considered that it was worth three times that amount when the coal would be struck; but as far as the shaft was sunk at that time I don't know what to state as to what it was worth at that time.

Q. Look at that book and state what it is (handing book to witness).

A. It says, "Illinois Geological Survey: Abstract of report of Illinois coals, description and analysis," &c.

Q. Look at page 83 of that book; that contains geological survey of the State of Illinois on that page, does it?

A. Yes, sir.

Q. Had you seen that book before or at the time you organized that company?

A. I think I did.

Q. You had seen that report in regard to Marion county, had you?

A. I think I had.

Q. Were you induced to go into the company in conse-

139 quence of the report as to the size of the vein in Marion county, Illinois?

A. I based my joining the company on a good belief that there was such a strata of coal there and on account of securing this royalty.

Q. As stated in that report?

A. Yes, sir.

Q. Now look at the word "coal" there and state what size it puts the vein at.

A. 6 feet of coal.

Q. When you made the contract with Frank Seymour to sink the shaft on the 2 acres of ground described in the deed from Samuel Ewing and wife did you do it under the assumption that there was 6-foot strata of coal there?

A. Yes, sir.

Q. State, now, how a 6-foot vein of coal is regarede among owners of coal mines and coalmen.

A. I don't know anything about that.

Q. I mean, is it regarded as a good vein, a vein of that thickness, or not for coal purposes?

A. It is regarded certainly as a good working vein, the 6-foot vein.

Q. Did you feel great confidence that you would strik- a 6-foot vein of coal by going down deep enough for it at that point you commenced sinking the shaft?

A. I had the best confidence in it.

Q. That you would strike it?

A. Yes, sir.

Q. That is why you located the shaft there, is it?

A. Yes, sir.

Q. Do you remember the number of mining rights that Mr. Townsend had secured for the benefit of the company?

140 A. I don't remember the number.

Q. A large or small number?

A. I think it was a large number.

Q. Do you remember the number of acres embraced in these mining rights?

A. I have heard often of 940 acres; I never measured it.

Q. It was understood that he secured the mining rights to 940 acres, was it?

A. Yes, sir.

Q. These mining rights were all around where the shaft was located, were they?

A. All pretty close together.

Q. Joining each other, joining the shaft, were they, the mining rights?

A. So far as I could learn they were joining each other.

Q. In a body, in other words?

A. In a body.

Q. Did you regard this vein of coal and these mining rights as giving great value to this company?

A. If the enterprise had been carried out by the company of course it would have been a good fortune in it, I think.

Q. That is why you put it at three times the value of the cost of sinking the shaft and putting the machinery in?

A. Yes, sir.

Q. That you put the $18,000 or $20,000 the cost of sinking the shaft and putting in the machinery?

A. Yes, sir.

Q. $50,000 or $60,000; that is what you regard that property worth?

A. Yes, sir.

Q. That is your judgment?

A. Yes, sir.

141 Q. I mean at the time it was taken out of the possession of the company.

A. No, sir; it was not worth that much then, at that time, but if the shaft had been sunk it would, but not at that time as it was left there.

Q. The property and materials, everything, was there to make it worth that by spending that much money?

A. Yes, sir.

Q. But it needed a certain amount of money and labor expended upon it?

A. Yes, sir.

Q. To develop it, in other words?

A. Yes, sir.

Q. What is the distance from Centralia to Sandoval?

A. I have never been there, but I heard something of it being 6 miles, and other times of it being 9 miles.

Q. Mr. Townsend subscribed for 391 shares, I believe; was that it?

A. That is about it.

Q. There was a portion of these shares that he was to take in trust for the benefit of the company?

A. I don't know anything about that.

Q. Do you know of his making an effort to sell a number of shares to Capt. George W. Wharton?

A. He did—tried to.

Q. And William Manning?

A. He tried to sell Mr. Manning some, but I don't know whether he ever took any or not.

Q. I asked you if you knew of his making an effort to sell them a large number of shares.

142 A. Yes, sir.

Q. When was it that he was making that effort to make those sales?

A. I don't think that it was done in one day; I think that he tried all the time, as long as it went along—tried all the time to sell—that is, from the commencement of the company—to whoever he thought would buy.

Q. He made an effort with other people besides those I have mentioned?

A. Yes, sir.

Q. You know of his making an effort to sell stock to them?

A. Yes, sir.

Q. Did the matter appear well understood with Capt. Wharton about selling him a number of shares?

A. I think so.

Q. About how many shares?

A. For $10,000.

Q. Had you as secretary of the company made out a certificate of stock to Capt. Wharton for that number of shares?

A. I did not; one afternoon late, towards evening, Mr. Blackman and Mr. Wharton came to my place of business there, but were pretty much *on* a hurry and did not stay quite long enough to get the thing straight.

Q. What do you mean by getting them straight?

A. That is, getting the certificate fixed up and signing the subscription list.

Q. For so much stock?

A. Yes, sir.

Q. Did you make out any certificate for him or anybody else?

A. Sometimes there were little transfers made.

143 Q. Did you ever make out any for him, for Mr. Wharton?

A. No, sir; I don't think it ever came to that point; did not get so far.

Q. It was under negotiation, was it?

A. Yes, sir.

Q. Did you ever talk to Mr. Manning about his buying some of the stock.

A. I was there once, but he did not seem willing to go into the company.

Q. He was willing if Mr. Wharton would come in?

A. No, sir; he was not—that is, Mr. Manning did not want to come in.

Q. When was this?

A. That was in the latter days of April, 1878.

Q. I will ask you what prevented Mr. Wharton getting that stock.

A. I could not exactly tell; but somehow Mr. Wharton had gone home as usual over night, and so that night he talked to some one and showed him what he had got, and they told him that he had a thing there that was not worth a cent while Mr. Townsend's signature was — on it.

Q. Not on what?

A. On some stock that was to be issued to him; maybe I made a little mistake there a little while ago, but I will see; so he came next morning again. He had given a check of $1,000, which he placed in my possession—that is, late in the afternoon—and the same evening, in talking to some one and showing what he had got, they told him it was not worth anything, as the president's signature was — on it, so he came the next morning before banking hours and returned everything and demanded his check back urgently, as he has stated himself, and that is what prevented him from coming in any further.

Q. What papers do you mean he brought back?

144 A. I think I had issued some certificate to him; of course, I could not give anything else but my signature, and I be-

leive I made a little mistake here when I said that I did not issue any certificate to him, but Mr. Wharton had never subscribed; that is it.

Q. The question is whether you made out any certificate of stock to him.

A. I think I did.

Q. For how much?

A. I think for the amount he was to take.

Q. How much was that?

A. For $10,000.

Q. You think you made out a certificate for that much?

A. I think I did.

Q. That was under the negotiation with Mr. Townsend for him to take $10,000 in stock?

A. Yes, sir.

Q. And he put up a check with you as secretary late in the evening?

A. Yes, sir; late in the evening.

Q. Then the bargain had been that far carried out, had it, that he put up a check for $1,000 with you to be paid on the stock issued him and you had given a certificate issued by you, but without Mr. Townsend's signature?

A. Yes, sir.

Q. And the next day Mr. Wharton came back and returned that certificate signed by you and asked for his check, did he?

A. Yes, sir.

Q. And you gave it back to him, did you?

A. Yes, sir; he says, "If you don't give me that check back I will go down straight to the bank and prevent the payment
145 of it and you won't get the money, anyway."

Q. What did you do then?

A. Well, he fussed so, and at the same time promised that he would give the check back to me on Mr. Townsend putting his signature to the certificate, and so in that view I gave him the check back.

Q. And he returned you the certificate you had given him that was signed by you as secretary for $10,000 stock?

A. Yes, sir.

Q. Did Mr. Wharton tell you that Mr. Manning was going to take some stock, too, besides himself?

A. No, sir; but he wanted to ge- Mr. Manning in, but he did not get him in.

Q. Did you have any talk with Mr. Manning?

A. No, sir.

Q. You say Mr. Townsend was not there and that you gave him up the check and took back the certificate for the $10,000 stock?

A. Mr. Townsend was not there.

Q. You did that upon your own responsibility, then, did you?

A. Yes, sir.

Q. What do you say is the date of this transaction between you and Capt. Wharton?

A. That might be the 30th of April, 1878; within a day or two of that. It could not be possibly a day or two later, but possibly a day or two before.

Q. If that bargain with Capt. Wharton had been consummated could you have raised money enough to pay for the sinking of the shaft?

A. I don't hardly beleive we could.

Q. If there had been some more stock sold you could have raised it?

A. If there had been sufficient stock sold.

146 Q. Mr. Townsend was trying to sell that stock for his—for that purpose, was he?

A. Yes, sir.

Q. That check that Capt. Wharton gave you was to go into the treasury of the company for the benefit of the company?

A. Of course.

Q. It was not to go to Mr. Townsend individually?

A. No, sir.

Q. As I understand you, Mr. Townsend was *am*king all the effort he could to sell the stock he held so as to raise money for building the shaft and paying for the machinery and putting the mine in order?

A. Yes, sir; at that time he was.

Q. What prevented him from carrying this thing out?

A. After this transaction with Mr. Wharton had fallen through the thing seemed to be stopped entirely.

Q. Had you put the seal of the corporation to that certificate of stock to Capt. Wharton?

A. I don't know that I did.

Q. Did you have a seal?

A. It was about those days when I got the seal.

Q. How long did you keep it?

A. I did not have it very long?

Q. Why did you not keep it?

A. I had the books and seal put away as usual and Lawyer Blackman advised that the books would be better over at the main office, I think it was; I had put those books away and some one took them away from the place where I put them.

Q. When was that done?

147 A. Some time in May.

Q. About what time in May?

A. I don't know what time.

Q. Mr. Townsend, as president of the company, had called a meeting of the directors to be held here in St. Louis on the 2d day of May, 1878. Were the books taken from you before or at or after that meeting?

A. Not before that meeting.

Q. When were they taken from you?

A. They were taken afterwards.

Q. And not at the time of the meeting?

A. No, sir.

Q. Do you know who took them?
A. No, sir.
Q. When did you miss them?
A. Some time afterwards, when they were taken away.
Q. How soon after?
A. I don't recollect how long after, as I did not have to use the books every day. I did not look for them every day.
Q. Can you fix the time when the seal and books were taken out of your possession?
A. I don't know the date.
Q. Where did the seal and books turn up after that?
A. I heard afterwards that they were over in East St. Louis.
Q. How soon afterwards did you hear *fo* their being there?
A. That I could not tell you, the date.
Q. About how soon?
A. Some days afer.
Q. Do you know of the meeting that the president called for the 2d day of May in this city?
148 A. I did not hardly know there was a meeting called on that day by the president here in St. Louis. I won't say there was not.
Q. They were all in the city that day, were they not?
A. Yes, sir.
Q. Did they hold any directors' meeting in this city?
A. Not in this city.
Q. Did they have an informal meeting over in St. Louis?
A. They had the information that a meeting would be held there on the 2d day of May, as they were present in my place of business the evening before and wanted me to notify them that a meeting would be held on the next morning over in East St. Louis.
Q. Was that on the 2d or 3d of May?
A. That was on the evening before May 2d.
Q. Who requested you to notify them?
A. The directors.
Q. Who were they?
A. Mr. Blackman, Mr. Mears, myself, and Mr. Wharton were all present.
Q. But Mr. Townsend was not there?
A. No, sir.
Q. He never called any meeting to be held in East St. Louis, did he? I mean at that time, for the 2nd of May.
A. No, sir.
Q. Was there any meeting held at East St. Louis?
A. I called it and considered it a meeting. There was a meeting held.
Q. Who were at that meeting?
A. I was there for one, and Mr. Blackman, Isaac Main, Mr. Mears, and Mr. Wharton was there, too.
Q. But Mr. Townsend was not there?
A. No, sir.

149 Q. Your president, then, was not there?
A. No, sir.
Q. He didn't know anything about that meeting?
A. I don't think he did; I don't know.
Q. Did you notify him of it?
A. No, sir.
Q. Do you know of anybody else notifying him of it?
A. No, sir.
Q. Why did you hold that meeting over there?
A. I think it was advised by the lawyers.
Q. Who else advised it?
A. I don't know of any one except Mr. Blackman—he was a lawyer—and B. Gratz Brown—he was a lawyer—that advised it in that way.
Q. Why did they advise you to hold it over there without the president?
A. We had no president at that time.
Q. Mr. Townsend was your president?
A. Not at that time, as his stock was all forfeited on him, so we had no president at that time; the minutes will show that.
Q. When was his stock forfeited?
A. Here in St. Louis, in Million's office, on 8th street.
Q. You had no president, then, according to your theory?
A. No, sir; the others knew it, too, and believed it so.
Q. Could you hold any meetings under by-laws without notice by the president of the company?
A. I could not answer that question.
Q. Under the by-laws was anybody except the president authorized to call a meeting of the directors?
A. I think not; but when we wanted a meeting and had
150 no president what else could we do? We were all present there; we had 4 then, and we wanted to make another director the next day, and did, but he did not stick.
Q. Why did he not stick?
A. Because he did not want to.
Q. What was his name?
A. Mr. Wharton.
Q. Did you act as secretary and treasurer any more after the seal and books were stolen from you?
A. No, sir; I did not.
Q. Did you ever get the seal back into your possession?
A. No, sir.
Q. Do you know where they are now?
A. I suppose they are in court.
Q. Where?
A. At Salem, Illinois.
Q. Do you know the number of mining rights that were secured by the plaintiff?
A. I do not.
Q. The plaintiff claims to have got 436; do you think there was about that number?

A. There may have been; I don't recollect that I ever heard the number.

Q. Do you know what was paid for those mining rights?

A. The deed or the record shows the acknowledgement of $1.00 each, I think.

Q. Who paid that $1.00?

A. I don't think that $1.00 was ever paid; I helped to secure those mining rights, but I never saw $1.00 shelled out.

151 Q. Who paid the officer for taking the acknowledgement of each party?

A. I don't know, but I suppose Mr. Townsend paid that.

Q. Do you know how much that was?

A. No, sir.

Q. The recorder's fees for recording the deeds to the mining rights—who paid that?

A. Mr. Townsend paid some and some I paid. I did not pay for the recording of the deeds. I think Mr. Townsend paid that.

Q. You paid for recording the Ewing deed, did you?

A. One deed that I got recorded here according to my memory, but I don't know what deed, and here is another that I paid $1.00 for.

Q. Do you know of Mr. Townsend having paid $100 to B. Gratz Brown for legal services in getting up the organization papers, giving advice, and one thing and another?

A. I don't know that.

Q. Do you know of his having paid him anything?

A. No, sir.

Q. Do you know that B. Gratz Brown acted for the company in getting up the organization papers?

A. B. Gratz Brown charged the company $200.00 for getting up the documents, but what Mr. Townsend ever paid for that to Mr. Brown I don't know.

Q. I believe you stated that Mr. Townsend paid the fees for taking the acknowledgment to the mining rights?

A. Yes, sir.

Q. Under the by-laws the president was entitled to his traveling expenses when away from home on business of the company. Was Mr. Townsend away from home frequently over around Sandoval and other places on business for the company after the organi-

152 zation of the company?

A. I and Mr. Townsend were out there at that time and we located a place for the shaft, and I think Mr. Townsend has been out there once or twice after that as long as the works went ahead.

Q. Whilst the corporation was doing business, do you mean?

A. Yes, sir.

Q. Was he not over there oftener than that?

A. I don't think he was.

Q. That is all you know of.

A. That is all I know about, and he told me generally when he wanted to be out there.

Q. How much did it cost for railroad fare to go out there and come back?

A. $3.80.

Q. For both ways?

A. Yes, sir.

Q. How much a day did it cost to board there at the hotel?

A. $1.00 a person while we were out there getting up the mining rights.

Q. When was it that you were out there getting up the mining rights?

A. That was some time in November, 1877.

Q. Here is $25.00 for printing the by-laws of the corporation. Did he pay for that?

A. I expect he did.

Q. Would that be a fair price?

A. I don't know whether that is right or not. I don't know how many copies were printed and I could not state whether it was right or not.

Q. You think that would be about right?

153 A. I think it would be about right.

Q. Here are the books and seal $25.00; do you know of his buying them and paying for them?

A. He paid for the seal, but he did not pay for all the books.

Q. About how many of the books did he pay for?

A. I don't know; there were about 4 or 5 books in all; one he furnished—the proceedings or the minutes—and I think I paid for almost all of the other books; the transfer book I got and the receipt book I got and one blank book I got.

Q. The stock-certificate book, did he buy and pay for that?

A. Yes, sir; Mr. Townsend got that.

Q. That was a pretty costly book, was it not?

A. I think it was.

Q. Do you know what that stock-certificate book with the seal placed cost?

A. No, sir.

Q. Do you know what it would likely cost, what would be a fair price; would $12.50 be a fair price for that book?

A. It may be a fair price for that book.

Q. What other books did you have besides the stock-certificate book that he bought and paid for?

A. I had one book that I called a blank book, and one book that I put the names of the stockholders in, and the receipt book in case parties came in to pay an assessment, so I would have a receipt for them there.

Q. Those are the books that he bought and paid for?

A. No, sir; those are the books I bought and paid for.

Q. Name the books that he bought and paid for?

A. That is the certificate book; I do't know as he got any

154 other book except the one that he had at the house that we commenced to write the proceedings of the meetings in.

Q. What did the seal cost?

A. To my best recollection and hearing Mr. Townsend state at that time that the seal cost $4.00.

Q. Here is "abstract of title to 2 acres of land purchased, $500.;" do you know anything about that?

A. Mr. Townsend wanted to see whether the title was correct or not.

Q. He got an abstract then?

A. I think he got an abstract then.

Q. How much did he pay for it?

A. I don't know.

Q. "$500.;" would that be about right?

A. I could not set a price on it, but I don't think that would be too much.

Q. You think about $500. would be about right for that?

A. I think it is.

Q. Here is for "advertising notices of the meetings of the board of directors and stockholders, $35.00:" would that be about right?

A. Is that for one meeting only?

Q. I don't know.

A. It may be for 8 or 9 years' advertising and put in there all together; such a big item all at once it looks too high, but divided up between 9 years it is probably all right.

Q. Do you know of his making a trip to Indiana to examine the machinery there?

A. Yes, sir.

Q. He took some one with him, did he?

A. Yes, sir; James Collins.

Q. He charged $65.00 for that trip; do you know how much that was?

155 A. I had a bill of Mr. Collins' in my possession. I think it was something like $16.00 for traveling expenses, for Mr. Collins' part, and Mr. Collins said, "He made me pay my own money for that trip."

Q. Did he charge for his time?

A. He charged $10.00 a day for his time.

Q. What do you say to the charge of $65.00 for that trip?

A. I don't know as Mr. Townsend has paid that.

Q. Would that be too much for the trip if it was paid?

A. I think it would be too much.

Q. Where a man is charged for his time and traveling expenses, too, and Mr. Townsend charged for his traveling expenses; would $65.00 be too much?

A. It would not cost that much for one person; I am sure of that.

Q. But the 2 of them?

A. Mr. Collins told me that he never got paid.

Q. The question is what it is worth?

A. Mr. Collins presented his bill to me as secretary. I think there was something like $30.00, his bill; he charged $10.00 a day and his railroad fare.

Q. $30.00 for his time, was it?

A. The bill was all about $30.00, about $30.00 or $32.00, something like that.

Q. You could not go from here to Indiana and examine machinery very much in that time, could you?

A. They were only there an hour or 2, and they were through there.

Q. What place did they go to in Indiana?

A. I don't recollect the name of the place.

Q. About how far from here?

A. I don't know that, either.

156 Q. About 300 miles?

A. I have not heard as to that.

Q. Did Mr. Townsend pay for the license fee and the certificate of incorporation of the company?

A. I think he did.

Q. Do you know how much that was; he charged $7.50 for that?

A. No, sir; I don't know.

Q. Did you go with Isaac Main and others in the suit commenced in Marion county on the 27th day of June, 1878, against the St. Louis & Sandoval Coal & Mining Company and others?

A. I did.

Q. How did you come to go in with Mr. Main in that suit?

A. As the thing seemed to be stopped entirely; then the stockholders had got in so far and they had to see some way or the other to go ahead or get out again.

Q. Is it not a fact that you were down on Mr. Townsend at that time?

A. I was not down on Mr. Townsend, but it did not appear that it was going ahead any further at that time.

Q. Mr. Main was down on him, was he not?

A. Only the matter that no money was coming there from parties in St. Louis.

Q. Mr. Main was down on him, was he not?

A. I suppose at that time he was.

Q. Don't you know that he was?

A. We were all downhearted, all the stockholders over there; we were all downhearted because things did not go ahead as we wished them to.

Q. Isaac Main was down on him, was he not? Don't you know that he was?

A. He was.

157 Q. Was not Isaac Main determined to have the company dissolved?

A. Yes, sir.

Q. And he got you and the stockholders over in Marion county, Illinois, to go into the thing for that purpose, did he?

A. I could not say that was Mr. Main himself alone, the parties all over there wanted it that way.

Q. Who got you to join in that suit with Isaac Main and others?

A. It was part of my own free will and part from having conversation with them.

Q. With Isaac Main?

A. Not with Isaac Main alone, but with lots of them over there.

Q. Did they come to St. Louis to see you or did you go over to Marion county, Illinois, to see them?

A. They came over here once in awhile, one or the other of them, to see how things were getting along.

Q. State who it was that came over here to see you.

A. One time Dr. Edwards and at another time Isaac Main.

Q. Was not Mr. Main very positive and decided about the matter?

A. I think he was.

Q. Were you at the sale of this property of this corporation in September, 1878, by George W. Herrod as receiver?

A. I was.

Q. How many persons bid at that sale?

A. 2 persons.

Q. Who were they?

A. Isaac Main and Andrew Roll.

Q. How many bids did they make?

A. There were only 3 bids.

Q. Who bid first?

158 A. Isaac Main.

Q. How much did he bid?

A. I think it was $150, if I am not mistaken.

Q. The other person bid how much?

A. $175.00.

Q. The other bid was how much?

A. $200.00.

Q. And the property was knocked off at that?

A. Yes, sir.

Q. To Isaac Main?

A. Yes, sir; nobody bid any more.

Cross-examination.

By Mr. SHAEFFER:

Q. Mr. Townsend was elected president in November, 1877, was he?

A. I think it was in December, 1877.

Q. How long did he act as president of the company?

A. He acted from that time until the work stopped.

Q. When was that?

A. That was in, I think, April; some time — latter part of April.

Q. Who afterwards was acting as president after Mr. Townsend?

A. Nobody that I know of.

Q. Who acted as president of the meeting on the 2d of May, 1878, in East St. Louis?

A. Mr. Mears acted as temporary president.

Q. Did you then elect another president?

A We elected Mr. Wharton as president.

Q. Did Mr. Wharton accept the office?

A. He accepted it at the meeting, but did not stick afterwards.

159 Q. Did you ever have any meeting as a board of directors after the 2nd of May meeting?

A. Not during all the year.

Q. Then at that meeting and afterwards, how did you find the condition of the old company?

A. It was *ilde* until the following year, when Mr. Townsend hunted me up again and tried to reform the company again.

Q. Was there ever a stockholders' meeting after that to elect another board of directors?

A. I think there was a so-called stockholders' meeting, but there were not many of them there.

Q. Did a*ly* of these stockholders who had made any of their payments on stock attend any of the subsequent meetings?

A. There was never any assessments paid by parties that were subscribers here in St. Louis, so I can say from my own knowledge that there was not anybody there that had ever paid $1.00 assessment.

Q. The stock of the parties who had subscribed and who had not paid the assessment was forfeited before, was it not, by the action of the board of directors?

A. There were some exceptions. I think there was Mr. Power's stock, and, if I am not mistaken, Mrs. McCabe's stock was excepted.

Q. And Mr. Blackman's?

A. I think so, but I don't recollect that part so exactly any more.

Q. Then, after the meeting on the 2nd of May, '78, you stockholders that had paid that assessment all agreed together to bring suit in chancery to dissolve the corporation. Is that it?

A. That is my understanding of the concern at that time.

Q. Was not that a fact?

160 A. These so-called valid stockholders were not all there at that meeting. There were only 2, Seymour and Main, there at that meeting on the 2nd of May.

Q. In other words, you met together and agreed to bring suit in chancery to dissolve the corporation?

A. We did.

Q. Coming back now to the meeting at the time that the $10,000 credit was given, will you state how those resolutions were brought up and passed? Were they drawn up before the meeting and shown to you and then presented to the meeting and adopted?

A. They were drawn up before the meeting took place and were presented at the meeting and adopted.

Q. Why was it that these resolutions were adopted then?

A. It was to make things work ahead, to make a success out of it, to get in more stockholders after that time. That is my notion now.

Q. Did it have that effect? Did it set you to going again, or how?

A. It did not have the effect that I wished it to have.

Q. You expected to raise some money so that you could go ahead and complete the work, and failed in doing so?

A. That is about it.

Q. Had Mr. Townsend talked to you about those resolutions before the meeting was held?

A. I think he had the day before.

Q. By whom were the resolutions drawn up?

A. By Lawyer Blackman.

Q. Whose lawyer was he?

A. I suppose he acted as lawyer for Mr. Townsend at that time.

Mr. CARR:

161 Q. He was one of the directors then, was he?

A. No, sir; he got to be a director when the next meeting was held. I think that was the way it stood.

Q. He was a director in the meeting when the resolution was adopted, was he?

A. I think it was one meeting before that or at that meeting when this resolution was there that Mr. Blackman got to be a director. He had not been a director very long, I know that. The minutes will show that fact—when he was elected.

Mr. SCHAEFFER:

Q. You say that Mr. Townsend gave you an order on Mr. Main for $50.00. What was that $50.00 for?

A. For the second 5 shares that Mr. Main subscribed for on which he was to pay 10 per cent. entrance fee.

Q. Do you mean to state that Mr. Townsend subscribed for a large amount of stock and then held it in trust for the company? What do you understand by Mr. Townsend getting 10 per cent. on the stock that he sold?

A. That Mr. Townsend had made up for to be his, to repay him for his expenses that he had incurred before, so that he was to be reimbursed, and that is one point that this board of directors went to work and voted Mr. Townsend this $10,000 if Mr. Townsend would drop his 10 per cent. entrance fee.

Q. Do you mean to say that in the Isaac Main case that he agreed with Mr. Main that if Mr. Main would take 5 shares more of stock he would not charge him 10 per cent. entrance fee?

A. Yes, sir; but this action had not been taken at that time when Mr. Main subscribed and paid part of the $50.00 to me; that was afterwards.

162 Q. Do you know of Mr. Townsend selling any stock to any other parties?

A. Not of any amount; one share or two shares, perhaps; but very little, not to amount to anything.

Q. Did any of that ever go to the company?

A. No, sir; no assessment came in for it.

Q. There was nothing paid into the company for those shares?

A. There was nothing came in for the subscribed shares except those parties over there at Sandoval, with the exception that I have stated heretofore, what I got from Mr. Main at that time on account

of that $50.00 and I credited that towards Mr. Townsend's account in the book.

Q. But you did not get all of that from Mr. Main?

A. What I credited in the book: I think it is $20.00. I did not get the $50.00. I only got part and I credited that on Mr. Townsend's account so that can always be seen.

Q. Mr. Wharton, you say, had agreed to take $10,000 in stock?

A. Yes, sir.

Q. And afterwards did not take it?

A. He did not take it.

Q. He left a check with you for $1,000, and then afterwards you handed it back to him because the contract was not completed?

A. Because he demanded it so urgently from me, for if I did not give it back I could not have got the money anyhow, for he would have gone down and stopped payment of the check, for it was early banking hours in the morning.

Q. The fees for the acknowledgement of the mining rights, do you know who paid those?

A. I think Mr. Townsend paid that.

Q. Who took the acknowledgement?

163 A. I don't know.

Q. Was it not Squire Roll?

A. I don't know whether he did or not.

Q. Refresh your memory. Do you remember whether or not Squire Roll presented an account in that suit for his fees for the acknowledgement of the deeds?

A. I don't recollect having heard that part; in fact, I cannot say anything else, only that I don't know.

Q. At the time that property was sold by the receiver what was the understanding between you stockholders and Isaac Main as to his action in the matter in buying the property?

A. I think we were all one-minded in regard to the fact.

Q. Was it not this: that he should buy it and then sell it, if possible, for enough to pay the debts of Mr. Seymour and for other claims that were against the company there, so as to save you from having to pay more on your stock?

Q. They may have talked that matter over there in Sandoval to that effect, but it has never been spoken out clearly towards me.

Q. The sale was open and fair, anybody could bid?

A. Yes, sir; there was a good many there at the sale.

Q. And it was bid off at $200, the price which you paid for the land. Was that it?

A. I do not mean to say that they just bid as high as to make up this $200. They may have had no idea of that fact, but still it was knocked off at that amount—$200.

Q. Whilst Mr. Townsend was president of the company how often was he over at Sandoval? Do you know?

A. How many times I don't know, but once he had been out prior to that time before I went there, when I helped to get up these mining rights. Then at that time I think we were not there over

164 3 days. I think we were there 2 nights and 3 days at that

time in getting these mining rights secured; that is one time. Afterwards he went out there to select a place to sink a shaft, and that is 2 times, and then, I think, the next time was when the place was bought; that would make three times. After that Mr. Townsend had been out once by himself and straightened something up between himself and Mr. Seymour at that time; that would make 4 times. Then, I think, there is once more that we went out before the work ceased then; to the best of my knowledge it was 5 times that I know of; how many times he has been out there during the summer I could not state. I do not know that.

Q. These times you have mentioned were before the work closed?

A. During the progress of the work, 4 or 5 times.

Q. What else did Mr. Townsend do in the interests of the company during the time of his presidency?

A. He tried to sell this so-called surplus stock besides answering a letter here and there that came to him from Sandoval.

Q. Was that property at the time of the receiver's sale worth more than it brought? I mean, in the condition it was, was it worth any more?

A. If left in the condition it was it would not be worth anything more than it was sold for, if left in that way.

Q. You were a witness in the case of Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others?

A. Yes, sir; my deposition was taken at that time, too.

Q. The services of Mr. Townsend that you spoke of in that case are the same that you are speaking of in this case, are they?

A. I don't know whether I was asked that question at that time or not.

165 Q. You don't remember whether you were asked about that.

A. I don't think I was ever asked that question.

Q. The surplus stock, I believe you called it, what do you mean by that?

A. The part that Mr. Townsend did not have money to pay for the assessment; then it was considered at the last time that it was called surplus stock, but in the beginning I did not have an understanding of it in that way—that is, when the company was first organized I did not have an understanding of it that way.

Q. When the assessment was made on the stock Mr. Townsend claimed that he did not own the stock, did he; that he only held it in trust for the company?

A. No, sir; not just that.

Q. How was that?

A. I suppose if Mr. Townsend had had money he would have paid up, but it did not seem that he had any money so that he could pay the assessment.

Q. Now, then, did he propose to raise money for working the mine?

A. Trying to sell the stock.

Redirect examination:

By Mr. CARR: You say Mr. Townsend acted as president of the corporation until he was stopped in April, 1878; in what way was he stopped?

A. The work did not go ahead any more.

Q. That is the way he was stopped, is it?

A. Yes, sir.

Q. Did you mean by that that Frank Seymour had stopped sinking the shaft?

A. Yes, sir.

166 Q. You say there were no more meetings of the board of directors after the 2d of May, 1878?

A. No, sir.

Q. The last meeting that you spoke of was held on that day, was it, at East St. Louis?

A. Yes, sir.

Q. That is the meeting at which you had no president, is it?

A. Yes, sir.

Q. Mr. Townsend was not at that meeting?

A. He was not.

Q. That meeting, in other words, was not called by the president of the board of directors?

A. No, sir; not called by the president.

Q. There was simply 4 of the directors got together there by common consent, did they?

A. Yes, sir.

Q. That meeting was not held in conformity with the by-laws, then; there is no by-laws authorizing that meeting in that way?

A. That is the same question you put to me before and I have answered that question, although I can answer it again; according to the by-laws it was not.

Q. When you allowed Mr. Townsend $10,000 by your resolutions at the meeting of the board of directors at East St. Louis in February, 1878, was there anything said about his being allowed to charge 10 per cent. on the stock that he might still hold in his name or that was subscribed in his name?

A. I don't recollect that it was just stated at the meeting, but it was stated before and after the meeting; the matter was talked over before and after the meeting.

167 Q. That he would not be allowed 10 per cent.?

A. That he would have to drop the 10 per cent. so-called entrance fee on the stock sold by him.

Q. That is all the stock he had subscribed in his own name?

A. Yes, sir.

Q. After this suit, commenced by Isaac Main & others, about which you have been talking, was there a new corporation organized over there?

A. There was.

Q. What was the name of the new corporation?

A. The Sandoval Coal & Mining Company.

Q. At what time was that corporation organized?
A. I think it must have been some time in October.
Q. Of 1878?
A. Yes, sir.
Q. How much was the capital stock of that corporation?
A. I think it was $20,000.
Q. Were you a stockholder in it?
A. I was.
Q. For how many shares?
A. 20 shares.
Q. How much was it a share?
A. $20.00.
Q. How many of the stockholders in the old corporation went into the new corporation?
A. Myself and all those parties that lived over there at Sandoval.
Q. All who joined in that suit of Isaac Main and others, you mean?
A. All the stockholders.
Q. All the parties who joined in that suit?
168 A. Yes, sir.
Q. You were one of the plaintiffs in that suit also yourself, were you?
A. Yes, sir.
Q. Let us get a list of them. Do you remember the names?
A. I will call them off: "Isaac Main, Lambert Nolan, Jacob Litchy, C. N. Rockwell, and Andrew Roll."
A. He did not go in; not to my knowledge.
Mr. Carr continued reading: "Charles Reinhardt, Francis H. Edwards, and Henry Wellhoener." Are those all that went in of the old stockholders?
Mr. SCHAEFFER: Yes, sir; that is all.

Mr. CARR:

Q. You mean to convey the idea that all the parties plaintiff in this suit in which Isaac Main and others were the plaintiffs and that were stockholders in the old corporation took stock in the new corporation?
A. That is my opinion.
Q. Who were elected directors of that new corporation?
A. I don't know.
Q. For what purpose was the new corporation organized?
A. To go ahead and sink the shaft down to the bottom of the coal.
Q. That is, the shaft that had been commenced by the old corporation?
A. Yes, sir.
Q. Who was the main party in getting up the new corporation—I mean the most active *man* in it?
A. I could not state who was the most active person. I think all worked as good and as lively in it as they could.

Q. Who was it that spoke to you about taking stock in the new corporation?

169 A. Mr. Seymour, Mr. Main, and Mr. Edwards. I think those 3 were the only ones that spoke to me about it.

Q. Do you know when Mr. Main conveyed the property—that is, the land embraced in the Ewing deed to the old corporation—to the new corporation—the 2 acres of ground upon which the shaft was sunk?

A. I don't know the date, but I think it was some 2 months after September.

Q. After the sale, you mean?

A. Yes, sir; after the receiver's sale.

Q. How many of the stockholders in the old corporation were present at the receiver's sale?

A. I don't know whether there was any one present but myself from St. Louis.

Q. Out there, I mean.

A. I think they were pretty much all there. I don't know as any one was missing.

Q. You think they were nearly all there from Marion county?

A. I think all Sandoval was there.

Q. There was none of them that bid on the property except Isaac Main himself?

A. Mr. Main and Mr. Roll bid.

Q. But Mr. Roll did not go into the new corporation?

A. Not to my knowledge.

Q. Was there any agreement among yourselves as to how much you would bid on this property?

A. Not to my knowledge.

Signature waived by agreement of council.

Not being able to complete the taking *to* these depos*ti*ions

170 by reason of absence of witnesses, I adjourn the further taking of the same till tomorrow, then to be continued at the same place and between the same hours as authorized by the commission to myself as special examiner.

C. C. COWEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 21st day of December, 1888, I continued the taking of the said depositions as follows, James Carr, Esq., appearing for the plaintiff and Mr. Schaeffer, Esq., appearing for the defendants.

The said CHARLES E. GARTSIDE, being first duly sworn and cautioned by me, as special examiner, as a witness to the said cause previous to the commencement of his examination to testify to the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows:

Direct examination.

By Mr. CARR:

Q. Please state your name, age, residence, and occupation.

A. My name is Charles E. Gartside; I am 30 years old nearly; I am president of the Gartside Coal Company, and I reside in the city of St. Louis, Missouri.

Q. State how long you have been engaged in mining coal.

A. I have been connected with mining coal since 1869.

Q. Continuously?

A. Continuously.

171 Q. State whether you or your company, of which you are president, is the owner of any coal mines in the State of Illinois; and, if so, state where.

A. In St. Clair county and in Jackson county, Illinois.

Q. Have your coal-mining operations been confined to the State of Illinois?

A. Yes, sir; to the State of Illinois.

Q. From your experience in coal mining have you obtained a knowledge of the value of the coal lands in the State of Illinois?

A. Yes, sir; to some extent.

Q. Do you know where Sandoval is on the Ohio & Mississippi and Illinois Central railroads?

A. Yes, sir.

Q. You know the locality around there, do you?

A. I know about the locality.

Q. What was the market price of coal lands in that locality in the year 1878 per acre?

A. I cannot say that I could place the value of them at Sandoval, but on the Cairo short line about the same distance out we have been offered coal lands there at $30.00 per acre.

Q. How near are the lands to which you refer to *to* Sandoval?

A. I really don't know the distance across there; I fancy it is about 20 miles across there.

Q. Would coal lands be worth about the same at Sandoval as at the place of which you spoke?

A. I presume they would be worth about the same.

Q. Will you state the facilities for obtaining transportation at Sandoval? I mean the railroad facilities.

A. They were good on the Ohio & Mississippi road.

172 Q. And there is another road there, too?

A. And the Illinois Central.

Q. Sandoval is right at the intersection of the two roads?

A. Yes, sir.

Q. That is a fact, is it?

A. Yes, sir.

Q. Would that make any difference in the value of coal lands, the facilities for shipping from Sandoval to the other places?

A. Yes, sir; it might add to the value of them, as it would give more facilities.

Q. They would have 2 railroads running in opposite directions?

A. Yes, sir; it would add to the value.

Q. Please state the direction of this Ohio & Mississippi and Illinois Central railroads.

A. The Ohio & Mississippi runs nearly west and the Illinois Central north and south.

Q. Assuming that the lands had a vein of 6 foot of coal on them, what number of tons an acre would a vein of that kind produce?

A. About 6,000 tons to the acre.

Q. If the shaft had been sunk and the mine was all ready for mining and the proprietor desired to run it out or let it out at a royalty—and was the usual royalty paid in that case in 1878?

A. I should say about ¼ of a cent per bushel.

Cross-examination waived.

Signature waived by agreement of councel.

The said OZIAS TOWNSEND, being first duly sworn and cautioned by me, as special examiner, as a witness to the said cause
173 previous to the commencement of his examination to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows:

Direct examination.

By Mr. CARR:

Q. Please state your name, age, residence, and occupation.

A. My name is Ozias Townsend; age, 62; residence, 1323 Montgomery street, St. Louis, Missouri; my occupation, I suppose, is timber business now.

Q. Look at this paper here shown you and state what it is (handing paper to witness).

A. It is the license for the organization of the St. Louis & Sandoval Coal & Mining Company; Ozias Townsend, William Bowen, and Johnston A. Power, commissioners.

Q. Do you identify that as the license granted the commissioners named?

A. It is, sir.

Paper referred to offered in evidence by plaintiff and marked Exhibit "C" to Ozias Townsend deposition and hereto attached.

Q. State whether the commissioners therein named took any steps to organize the St. Louis & Sandoval Coal & Mining Company; and, if so, whether the certificate of incorporation was granted; and, if so, state when it was granted.

A. Yes, sir; it was. I was the Ozias Townsend named in the license. Yes; we did; yes, sir; the certificate of incorporation was granted. The certificate was granted (witness refers to pamphlet from date) December 12th, 1877.

Q. Where is that certificate of incorporation?

174 A. In East St. Louis, at the Workingmen's bank, in Mr. Millim's office; that is where I saw it last, and I suppose it is there yet.

Q. State why it was in his possession and how it came to get into his possession.

A. He was my attorney, and he requested it for a guide to go by in the case of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others, in the circuit court of Marion county, Illinois.

Q. It was used in evidence on the trial in that case?

A. It was.

Q. Will you try to get it and file it as Exhibit "D" to your deposition in this case?

A. Yes, sir; I will.

Paper referred to produced by the witness and marked Exhibit "D" to his deposition and hereto attached.

Q. State the amount of the capital stock, the amount of each share of stock, and the number of shares subscribed to the St. Louis & Sandoval Coal & Mining Company, and when it was done.

A. The amount of capital stock was $50,000; the amount of each share was $100; the number of shares subscribed for was about 3,700. It was done in 1877, a portion of it.

Q. How much do you say was subscribed?

A. $3,900 was subscribed for and only 2,700 taken in 1877, and in 1878 George Wharton took $10,000.

Q. I mean when you started business did you subscribe the whole capital stock?

A. Yes, sir; I subscribed for——

Q. State whether the whole of the capital stock was subscribed.

A. Yes, sir; it was.

175 Q. State the names and number of shares subscribed by each person. (Witness refers to a book.)

A.—

Isaac Main, 10 shares	$1,000
Lambert Nolan, 1 share	100
Jacob Litchy, 2 shares	200
C. N. Rockwell, 3 shares	300
C. Reinhardt, 5 shares	500
F. H. Edwards, 5 shares	500
H. Wellhoener, 50 shares	5,000
Frank Seymour, 2 shares	200
Johnston Power, 2 shares	200
Albert Ross, 1 share	100
Mary McCabe, 10 shares	1,000
Thomas B. Hill, 1 share	100
James Shields, 10 shares	1,000
James Collins, 5 shares	500
John B. Mears, 2 shares	200

Q. You subscribed, yourself, for 391 shares, was it?

A. Yes, sir; I took the remainder of the shares to make the $50,000 subscribed.

Q. State if there was any arrangement or understanding with the stockholders in regard to your having subscribed so much stock yourself; and, if so, state what the arrangement was.

A. No, sir; there was not; not at that time.

Q. About the number of shares as subscribed?

A. Yes, sir.

Q. What time do you mean?

A. After we had a meeting—our regular meeting—then they proposed for me to carry this enterprise out and to hold stock
176 and sell it to get means to carry this enterprise out, and I held the stock in my possession to dispose of it as I could.

Q. State how much stock you held for the purpose of disposing of it for the benefit of the company.

A. I held at that time 379 and some odd shares until the second meeting.

Q. You mean to convey *that* idea that you held that number of shares in trust for the benefit of the corporation?

A. I held it until the second meeting and then we had our affairs arranged in regard to carrying stock.

Q. What were you to do with the stock?

A. They proposed to buy me out and put me on equal footing with them, with my money expended up to date. I had expended a good deal of money and my time, and they proposed to release themselves of it so as to go out without paying the 10 per cent.

Q. What were you to do with the stock?

A. I was to sell it for the benefit of the company. I was at their services. I was working for them.

Q. What I want to get at is what you were to do with the money when you sold the stock?

A. I was to turn it into the treasury of the St. Louis & Sandoval Coal & Mining Company.

Q. How many shares were you to keep for your individual benefit?

A. There was no limit, only the $10,000 that I spoke of.

Q. You subscribed for about 391 shares?

A. Yes, sir.

Q. And were to sell 380 shares for the benefit of the company? Now, what were you to do with these 11 shares?

A. I say I was not limited. I could sell out until I was told to stop.

Q. State whether you had sold any of the 380 shares sub-
177 scribed by you; and, if so, when and to whom.

A. Yes, sir; I had; I had sold to Isaac Main 10 shares and Francis H. Edwards 10 shares.

Q. These were the original subscribers?

A. Yes, sir; I had sold $10,000 outside.

Q. Confine yourself to the 380 shares you subscribed for the

benefit of the company; the sales, or efforts to make sales, is to be confined to the 380 shares.

A. I sold $10,000 worth of that stock.

Q. To whom did you sell it?

A. I sold it to Capt. George W. Wharton and to a man by the name of William Manning, who was to take $15,000 more; that was engaged; that is the amount of the stock that I sold outside.

Q. Do you mean that was these 380 shares?

A. Yes, sir; that is what I held; I received $1,000 on account to bind the contract, or my secretary received it, or the secretary of the St. Louis & Sandoval Coal & Mining Company; that was in 1878, on the 1st day of May, when he paid the money.

Q. State whether the contract was consummated; and, if not, state why.

A. It was not consummated for the very reason that he would not proceed until the certificate was signed by me as the president of the company, and I could not sign it for the want of the seal. I could sign it, but I could not seal it. I had gone into the office to sign it and somebody had taken my seal, so he would not accept of it without the seal being put on.

Q. Do you mean your seal or the seal of the corporation?

A. The seal of the corporation; he would not receive it until the seal was put on. I went into the office of Henry Wellhoener and laid the seal down and it was stolen while I was there. Henry Wellhoener was the secretary of the corporation.

178 Q. Was there any other reason why the contract was not consummated with George W. Wharton?

A. I don't know of any other reason. I worried him a long time, but he did not take hold; he got $4,000 of my paid-up stock to come in and take $10,000 of unpaid stock, and I gave him $4,000 of my paid-up stock that the company had awarded me to do this; that is what he paid the money on. Our secretary was to give him a receipt for the money and issue the stock, and he issued the stock and received the money, the $1,000, by me giving him $4,000 of paid-up stock when he produced the receipt to show that he had paid into the St. Louis & Sandoval Coal & Mining Company $1,000; then he could draw my $4,000 of my paid-up stock for the benefit of the St. Louis & Sandoval Coal & Mining Company, which he did; he produced the receipt for the payment of the $1,000 and drew his $4,000 in stock of my paid-up stock, and he and Isaac Main, of Sandoval, Illinois, and Dr. Edwards, and Frank Seymour took that stock to different places and tried to sell it at 50 cents on the dollar; they all 4 went to William Manning and offered to sell it for 50 cents on the dollar, and went to Lawyer Rogers and offered it for 50 cents on the dollar and to a broker here, and went to Lawyer Wingate and offered to sell it to him for 50 cents on the dollar.

Q. What stock are you talking about?

A. About the $4,000 that the St. Louis & Sandoval Coal & Mining Company issued to me and charged me as paid-up stock, part of the $10,000, and I took my paid-up stock.

Q. They were trying to sell your stock?

A. Trying to sell my paid-up stock that the St. Louis & Sandoval Coal & Mining Company had awarded me, unassessable
179 stock; I gave it to Capt. George W. Wharton to take this $10,000 of stock to carry on this enterprise of the St. Lou-s & Sandoval Coal & Mining Company, and he received the money for the company and receipted it, and he came and produced the receipt to show that he had paid into the company that amount of money, and he drew the stock and then put it on the market for sale; he and Isaac Main & others, Francis H. Edwards and Seymour were all in the market trying to sell that stock in 1878.

Q. State if there was any reason why you did not go on and sell the 380 shares of stock subscribed by you to the corporation.

A. Yes, sir; there was. The reason was that the books and seal and all was stolen or taken away from me so that I could not sign the stock. I was left helpless. Isaac Main and Francis H. Edwards came here in 1877, May 1st, and went there to Henry Welihoener's and had a meeting and stole my books and seal and everything belonging to the company so that I could not sign any stock or could not seal any stock thereafter, and I was left in that condition; the next thing I heard of the books and seal they were in Sandoval, Illinois, and Isaac Main wrote me a letter, saying if I wanted to find out anything in regard to the coal mine to inquire of George Wharton or go out there and see about it and throw it into the court and the court would have something to say about that; he said he had my books and seal out there in court. I inquired all the time where I could find my books and seal and my secretary would not tell me anything about it. Henry Wellhoener would not tell me where they were and I did not know anything about it until I got a letter from Isaac Main, who said they were out there and would be thrown into court and it was in court then. Then I was helpless; had neither seal nor books. The secretary
180 went back on me; that is the reason that I could not sign the stock.

Q. Have you got that letter from Isaac Main yourself?

A. I think I have. (Witness unable to find letter among his papers.) Upon reflection, the letter is on file with the papers in the case of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois.

Q. Do you remember the date of that letter?

A. No, sir; but it is somewhere about the latter part of May, 1878, I think. They stole these books on May 1st at night. I had called a meeting on the 2nd at 12 o'clock at North 5th street, but they did not attend according to the instructions of the president of the company. I wanted to see why they did not attend, but I could not find anybody until 1 o'clock May 2nd, '78—nobody but John B. Mears, who was with me. I met Mr. Main and Mr. Edwards about 11 o'clock on May 2nd and asked them if they would be there at due time at the meeting and they said, "O, yes; we will be there." I and Mr. Main went to the place of meeting and staid there until

1 o'clock and they never came. The next thing I heard of them was in Salem, Illinois, a year afterwards, before I heard, except that letter that I got from Isaac Main. They stole the books, seal, and everything, and took it with them. I should have taken them by criminal law instead of civil law.

Q. State in whose possession the seal and books of the corporation were at the time you say they were stolen.

A. They were in Henry Wellhoener's possession; he was secretary of the St. Louis & Sandoval Coal & Mining Company at that time.

Q. State if there was any meeting of the board of directors of this corporation after the 1st day of May, 1878, held under and
181 in conformity with the by-laws of the corporation.

A. No, sir; there was not; a meeting was called but they did not come.

Q. Called for what time?

A. For 12 o'clock on the 2nd day of May, 1878; most of them had written notices except those that were handy by where I could notify them in person; Isaac Main—I had notified him the week previous; he was here at the time but did not appear.

Q. State the number of shares that you had bargained with Capt. George W. Wharton to sell him of the 380 shares.

A. The number was 100 shares, $10,000.

Q. State the number of shares that you bargained through Capt. George W. Wharton to sell to William Manning.

A. He was to take $15,000 worth; that would be 150 shares.

Q. State whether the directors of the corporation worked in harmony with you or not in trying to carry out the business of the corporation.

A. No, sir; they did not.

Q. State when they began to thwart you in your efforts to sell the 380 shares of stock.

A. They commenced it some time in 1877; about in 1877 they commenced to work against me as much as they could, perhaps two months before this break up; they commenced after the first meeting, Isaac Main did, working against me; that would be in 1877 or 1878, and then they worked against me up until the 2nd of May, 1878.

Q. If they had not worked against you, as stated, do you think you could have succeeded in selling the 380 shares of stock?

A. I do; there was no trouble about it; it was already engaged, or a portion of it.

Q. Were you in good faith trying to sell the 380 shares of
182 stock for the benefit of the corporation?

A. I was, undoubtedly.

Q. And you had actually made the contract with Capt. George W. Wharton to take 100 shares of it, and which would have been consummated if the seal and books had not been stolen from your secretary?

A. If the books and seal had not been stolen I would not have had any trouble in disposing of the stock, none whatever.

Q. Was Capt. George W. Wharton a man of means?
A. Yes, sir.
Q. Was William Manning a man of means?
A. Yes, sir; he was.
Q. Able to take 100 shares of stock and pay for it?
A. Yes, sir; either of them; they were men of money.
Q. State when you first commenced to work up the project of organizing the St. Louis & Sandoval Coal & Mining Company and what length of time you spent until you finally received the certificate of incorporation on the 12th day of December, 1877.
A. I commenced on the 12th day of July, 1877, and worked on up until in December, about the 12th, I think it is, when I got the certificate of incorporation, and then I worked until I got it consummated; I got my license in October and the certificate of incorporation, and then I went ahead to organize the company thereafter, and which I did; December 8th, I think, was the first meeting called; we organized at East St. Louis, State of Illinois.
Q. Did you organize before you got your certificate of incorporation?
A. No, sir; we received it in December.
183 Q. State how you organized under your certificate of incorporation.
A. We elected so many directors—5 directors—and the directors elected officers for the ensuing year; all elected legally by ballot.
Q. State the names of the directors.
A. One was Ozias Townsend and Henry Wellhoener, John B. Mears, James Shields, and Isaac Main.
Q. State the names of the officers elected by the directors.
A. They were Ozias Townsend and Henry Wellhoener.
—. Ozias Townsend was elected what?
A. There was a president and a secretary elected. Ozias Townsend was elected president and Henry Wellhoener was elected secretary.
Q. Who was the treasurer?
A. Henry Wellhoener.
Q. And the executive committee?
A. Ozias Townsend and John B. Mears.
Q. State after the organization of the company if you did any business of any kind in connection with the corporation; and, if so, state what it was.
A. Yes, sir; we did some business; gave out the contract for excavation, for sinking the shaft. We purchased 2 acres of ground from Samuel Ewing and wife near Sandoval, Marion county, Illinois, for the purpose of sinking a shaft; that was the first thing we did; the next thing I did was to give out the contract. I made a contract with a man by the name of Frank Seymour to sink the shaft on these 2 acres which I had secured from Samuel Ewing and wife.
Q. State whether he did anything under that contract.
A. Yes, sir; he went ahead and sunk the shaft to the depth of

114 feet. I was out there frequently to see how he was getting along.

Q. State if you held any meeting of the board of directors;
184 and, if so, when and where.

A. Yes, sir; we did.

Q. When and where?

A. Some 2 or three meetings. I had called meetings quite frequently; got together to get ourselves broken into business, and everything appeared to be getting along very favorable. We held our business meetings in St. Louis, Mo., and our annual meetings were held in East St. Louis.

Q. You mean the stockholders' meetings?

A Yes, sir.

—. State whether the board of directors adopted a code of by-laws for the government of the corporation; and, if so, when.

A. Yes, sir; they did; they did that in 1877. I think it was somewhere along in the latter part of December before we could get them struck. We had to have 2 sets of them struck, and it was the latter part of December, I think, before we got them out. They had the first ones struck about the 12th or 15th, if I am not mistaken.

Q. Look at Exhibit "B" to the deposition of Henry Wellhoener and state whether that is a copy of the by-laws adopted by the board of directors of the corporation (handing Exhibit "B" to witness).

A. Yes, sir; I identify it as the by-laws adopted by the board of directors of the corporation.

Q. Will you state if you made any effort to secure mining rights for the benefit of the St. Louis & Sandoval Coal & Mining Company; and, if so, state how many you secured and at what time.

A. Yes, sir; I made efforts. I secured 436 mining rights. It was along at different times. I was several months at it. I put a good many on record November 10th.

Q. State whether you took any deeds from the parties
185 granting the mining rights to you for the benefit of the company.

A. Yes, sir; I did.

Q. Have you got those deeds?

A. I had them in my possession.

Q. Look at that paper now shown you and state whether it is one of the deeds you took from those mining rights (handing paper to witness).

A. Yes, sir; it is.

Q. Give the date of the deed.

A. The deed was dated 6th day of November, 1877, and is signed by Joshua Ellis and many other persons to me in trust for the use and benefit of the St. Louis & Sandoval Coal & Mining Company and acknowledged on the 10th day of November, 1877, before Andrew Roll, justice of the peace within and for Marion county, State of Illinois, and filed for record on the 10th day of November, 1877,

in the office of the recorder of Marion county, Illinois, recorded in Book D D of Deeds, page 74.

Deed identified by witness was offered in evidence by plaintiff and marked Exhibit "E" to Ozias Townsend's deposition and hereto attached.

Witness continues: I also identify a deed made to me by C. N. Rockwell and others dated November 6th, 1877, and acknowledged before Andrew Roll, justice of the peace, on the 13th day of November, 1877, filed for record in the office of the recorder of Marion county, Illinois, November 14th, 1877, and duly recorded in Deed Record D D, page 90 to 94, in the office of the recorder of Marion county, Illinois.

Deed referred to by witness was offered in evidence by plaintiff and marked Exhibit "F" to Ozias Townsend's deposition and hereto attached.

186 Witness continued: I also identify Exhibit "A," which is attached to the deposition of John Mears.

Q. State whether you negotiated the purchase from Samuel Ewing and wife of the land described in the deed from Samuel Ewing and wife to the St. Louis & Sandoval Coal & Mining Company, dated January 9th, 1878.

A. Yes, sir; I did.

Q. State who paid the money specified in that deed.

A. I paid the money. I gave the money to Henry Wellhoener, the secretary of the company, to go out there and pay for the land. I gave him $160.00 in money and an order on Isaac Main for $50.00, which made $210.00, and I paid $200.00 for the land through the secretary of the St. Louis & Sandoval Coal & Mining Company, and he came back and brought me the deed and the abstract; he had to have a little extra pay for the abstract and deed; the abstract cost $5.00, I think.

Q. Did you convey to the company the mining rights specified in the 2 deeds that are Exhibits "E" and "F" to your deposition?

A. I think I did. The record over there shows that I did convey.

Q. State whether the board of directors fixed your salary as president and *ex officio* superintendent; and, if so, state when and where and at what amount your salary was fixed.

A. That was in December, I think the 20th, of 1877, at 614 N. 9th street; there was a meeting of the board of directors; they were all present, and the salary was there fixed at the rate of $150 per month per annum; it was to commence on January 1st, 1878, I think.

Q. What about the traveling expenses?

187 A. The traveling expenses were fixed; it was to be taken out of the company; the company was to pay it—all expenses.

Q. Do you mean the president's traveling expenses?

A. I most undoubtedly do. I was president and director.

Recess was here taken until 2 o'clock p. m.

After Recess.

Examination of OZIAS TOWNSEND resumed.

By Mr. CARR:

Q. Please state whether you performed the duty of president and *ex officio* superintendent of the St. Louis & Sandoval Coal & Mining Company faithfully, industriously, and efficiently during the time you were elected president and all along so far as you did perform the duties of that office.

A. I did to the best of my ability.

Q. State how much of your time you put in in attending to the business affairs of the corporation.

A. I devoted all my time to that and nothing else.

Q. State whether there was any other reason besides the action of the directors in refusing to attend the meeting of the board on the 2d day of May, 1878, and thwarting you in other respects from consummating the sale of stock to Capt. George W. Wharton and William Manning, as you have heretofore testified to.

A. They commenced suit against the company and myself and others, which prevented me from executing the enterprise. They commenced suit in the circuit court of Marion county, Illinois, on the 27th day of June, 1878. The suit prevented me from going ahead.

Q. After that suit was commenced were you able or did you make any effort to sell any of the 380 shares of stock?

A. No, sir; I made an effort, but it was no effort at all. They repudiated it. I did not succeed.

188 Q. Was it on account of the suit that prevented people from buying stock?

A. Yes, sir; on account of the suit. It being in litigation, they would not touch it.

Q. State who was the main man in fomenting and getting up and carrying on that suit.

A. Isaac Main.

Q. Did you ever have any conversation with him in regard to the purpose for which he brought or prosecuted that suit?

A. I did not.

Q. Who got the other stockholders over there, living in Marion county, Illinois, into that suit with Mr. Main?

A. I cannot say.

Q. Were you at the sale of the property belonging to the St. Louis & Sandoval Coal & Mining Company by George W. Herrod, receiver, on the 28th day of September, 1878?

A. No, sir; I was not.

Q. Is George Wharton dead?

A. Yes, sir.

Q. When did he die?

A. I think 2 years ago this last November.

Q. Is True Blackman dead?

A. Yes, sir; they tell me he is dead. His friends tell me he has been dead for 2 or three years.

Q. Do you think you could have sold the 380 shares of stock and have received money enough to have paid Frank Seymour for sinking the shaft and putting the mine in running order within 2 years from the 7th of November, 1877, if you had not been prevented by the action of Isaac Main & others?

189 A. Yes, sir; I could with all ease, without a doubt.

Q. You have charged in that bill $510 as personal expenses incurred whilst over there from home on the business of the company and in that is included the $200 purchase-money paid Samuel Ewing. Will you please state how you make out the $510.00?

A. I have got it there in different bills. There are several bills of it. The Ewing bill is the largest. There are several bills in the $510.00; several items.

Q. Specify them.

A. In the first place there is $210 that I sent out by the secretary to pay Mr. Ewing for the land.

Q. Now the other $300?

A. Then I paid for recording the deeds. I don't remember what the amount of that is. Then I paid John B. Mears, I think, $55.00, if I am not mistaken, and I paid Mr. Roll, the notary public, I think it was some $60 or $100. I don't remember exactly, but it is in the bill there (bill handed witness). I paid B. Gratz Brown $110 for legal services toward getting up the documents for this St. Louis & Sandoval Coal & Mining Company in organizing it; mining rights, $30.00; books and seal, $25.00; for acknowledgement of deeds, $60.00, and board bill altogether for the clerk and myself and for these acknowledgements; recording deeds, $25.00; abstract of title, $5.00; Frank Seymour, $60.00; advertising notices of meetings of stockholders and directors, $35.00; February 23d, 1878, $25.00; cash advanced the company March 4th, 1878, $20.00; traveling expenses December 18th, 1878, $20.00; expenses to Indiana to examine machinery for the company, $65.00—the date is not here, but it was in December, 1877; license, $2.50; certificate of incorporation, $5.00.

Q. Do you think you have got all your items there?

190 A. No, sir; I have not got it all put down here; on one trip I had to take an expert to Sandoval, which cost me $10 or $15, to set the pegs for the machinery where it now sets.

Q. You made a trip to Indiana with an*d* expert, too, did you?

A. Yes, sir; the same man that I got to set the pegs here at Sandoval.

Q. How much did the 2 trips cost?

A. I have given one trip; I din't know what this was, but I think $15.00, about, for the one day's work.

Q. How much did the two trips together cost?

A. About $74 and some cents for the 2 trips; to Indiana, $65, and $14 and some odd cents for the other trip—that is, the same man, James Collins.

Q. State whether you called a special meeting of the board of directors to be held at East St. Louis hotel, in the city of East St.

Louis, Illinois, some time in February, 1878; and, if so, state for what purpose and at whose request you, as president, called that meeting.

A. Yes, sir; I called a special meeting for that time at the East St. Louis hotel, in the city of East St. Louis, State of Illinois, for the purpose of regulating affairs of the company. I called a special meeting there; there were a good many directors complaining about my selling stock and holding them responsible for 10 per cent. for coming in, and they proposed to settle that matter between them, and I called a special meeting and gave written notice to all, except one, I believe, and that was Henry Wellhoener; I notified him personally to attend the meeting to regulate the trouble, and at that meeting they proposed to give me $10,000 in stock and settle with me: after I called the meeting to order
191 they asked me if I would be excused; that they wanted the room for a short time without my presence. I said, "All right, gentlemen," and I retired for 10 minutes or 15 minutes, and then I called in. When I came back they had the proposition made out and wanted to know if I would accept it, and that is *if* they would give me $10,000 in stock and money that I had expended up so far for the benefit of the company and for organizing the company and getting the royalty; that they would give me $10,000 in paid stock as money if I could use it as such; that they would give me $10,000 in paid-up stock, and that I could use it as money for paying our assessments if there were any calls made on any stock that I should hold thereafter, and which there and then I accepted for money that I paid out therefor up to date, and then I had to go on a legal footing with the other men if I held any stock or took any stock. If I had it issued to me I had to pay in proportion as the rest of them thereafter; that is the transaction of that meeting. It was True W. Blackman, Henry Wellhoener, and John B. Mears that made a verbal request upon me to call that meeting.

Q. State who attended that meeting.

A. John B. Mears, Henry Wellhoener, George W. Blackman, and myself was all there was present.

Q. State whether you presented your account or claim for the services rendered in organizing and securing the mining rights for the corporation to this meeting of the board of directors.

A. No, sir; I did not.

Q. State how the directors came to pass the resolutions a copy of which is contained in your bill in this case.

A. I cannot tell you. I was not in the room when it was made. I was absent, out of the room.

Q. State how the directors knew that you wanted any com-
192 pensation for your services referred to.

A. I don't know that they did, but they made that proposition and I accepted it, and that is all I know in regard to it.

Q. Did you tell them that you wanted pay for your services?

A. No, sir; I would rather it had gone the other way. I did not want to accept it, but they insisted that I accept it or I could not come in.

Q. Why did you not want it settled up?

A. I thought I could do better with the other than I could to accept of the $10,000.

Q. Did you expect to get pay for the services rendered prior to the organization of the company?

A. When I accepted of that I expected to get $10,000. As a matter of course, I expected the $10,000 which they agreed to pay.

Q. I mean to ask you the question whether you expected to get pay for the services rendered before the incorporation of the corporation.

A. I did, sir.

Q. You expected to get larger pay than the $10,000, did you?

A. I expected to get more money for it. Royalty that I had secured was worth so much more money.

Q. Was securing those mining rights the principal ground upon which you based your right to a large compensation?

A. Yes, sir; it is the principal point there is in it.

Q. The directors, then, fixed your compensation for the services rendered at $10,000, as specified in the resolutions, on their own motion, did they?

A. Yes, sir; they must have, for I was not present.

Q. Did they call you back into the room after they had passed the resolution?

193 —. Yes, sir; they were all prepared when I came in there, and they wanted me to look at it, and I looked it over.

Q. Who drew them up?

A. I think True W. Blackman.

Q. Did you look at the resolutions?

A. Yes, sir; I looked at that bill.

Q. The directors informed you of the action they had taken whilst you were out of the room?

A. Yes, sir.

Q. After they passed them they requested you to come into the room, did they?

A. Yes, sir.

Q. And informed you what had been done?

A. Yes, sir; they told me that they had come to the conclusion that they would do, provided I would accept it.

Q. Had they already passed the resolutions?

A. I suppose so, as it was all done when I went there.

Q. State whether you agreed to accept the amount specified in those resolutions.

A. I did, sir, before the meeting adjourned.

Q. What was done towards carrying out those resolutions after that?

A. They called the meeting to order then and called True W. Blackman to the chair, I think it was, and then passed the resolutions to see whether it would be adopted or not, and it was agreed to by all present and unanimously put to vote that they should stand and be confirmed—that the $10,000 should stand as money.

Q. Were you present when they voted on it?

A. Yes, sir.

Q. Did you participate in it?

194 —. No, sir; I did not vote.

Q. After the directors passed the resolutions, state whether they signed the record containing the copy of it.

A. Yes, sir; they signed it in my presence. They said they wanted to make it legal while they were doing it; they did not want any trouble hereafter.

Q. It was of their own free will and accord that they signed the book containing the proceedings of the board of directors?

A. Yes, sir; they had the books there on the table.

Q. They signed the book in your presence?

A. Yes, sir.

Q. After those resolutions were acted upon, state what was done afterwards.

A. They just confirmed their action.

Q. I mean did they issue the stock or not?

A. Yes, sir; they issued the stock there and then.

Q. State whether they issued the stock or not and when and how much stock.

A. The stock book was there, and it was put to vote, and the stock was there issued and signed, and the seal was carried over there by the secretary, and it was signed and sealed and given to me, and that was the end of that meeting, and then we adjourned.

Q. State now whether, in your judgment, your services for which the allowance had been made by the resolutions spoken of were worth the amount specified in said resolutions.

A. Yes, sir; I do. I consider they are worth a great deal more to me at that time than I got.

Q. State how much money was paid upon the stock subscribed by the stockholders.

A. I cannot state exactly what the amount was, but I think

195 some $275 or $280 altogether.

Q. Did they ever pay anything on the subscription?

A. They all paid 5 per cent. that took stock.

Q. State how much the stockholders living in Marion county, Illinois, paid on their stock to the company.

A. They paid 5 per cent. on the stock that was issued.

Q. Did they pay any more than 5 per cent.?

A. No, sir.

Q. Are they defendants to this suit?

A. Yes, sir.

Q. State whether the St. Louis & Sandoval Coal & Mining Company has any property except the balance remaining on the unpaid stock of the defendants to this suit.

A. No, sir; not that I know of.

Q. Do you know anything about Isaac Main & others organizing the Sandoval Coal & Mining Company, commonly called the new company, after the property belonging to the old company had been

sold by George W. Herrod, as receiver, to him on the 28th of September, 1878?

A. No, sir; I do not, only hearsay.

Q. At the time of the sale of the property belonging to the St. Louis & Sandoval Coal & Mining Company, on the 28th day of September, 1878, by George W. Herrod, as receiver, what, in your judgment, was the fair cash value of that property?

A. The property at that time was worth between $65,000 and $70,000; just what I could get for it cash.

Q. State the number of acres embraced in the mining rights which you had secured for the corporation.

A. 942 is what the map calls for.

Q. State the thickness of the vein of coal underlying that land.

196 A. I think it is about 5 feet 6 inches thick; it don't run 6 feet, they tell me; they say it is about at a 5 foot 6 inch vein of solid coal.

Q. State the quality of the coal.

A. The coal is very good; a very good quality of common coal.

Q. You mean of bituminous coal, do you?

A. Yes, sir; I mean of that coal that comes out of that hole.

Q. State whether you were a witness and testified in that case of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois; and, if so, whether you testified anything in regard to the value of the services which you had rendered in getting the company incorporated, and also the money you laid out and expended for that purpose, and also the time, labor, and money expended in securing the 436 mining rights.

A. I was a witness in the circuit court in that case, but this was not at issue at all; I never testified as to the value or as to the money expended. The question was never asked me nor about the time expended.

Q. State how much money you paid, laid out, and expended in cash in getting the company incorporated, and also in securing those mining rights all told.

A. It would be almost impossible to give you an idea of what I did spend. I did not spare money at all. I spent a good deal of money running around the country. I forget just the amount to the dollar what it was, but it was something in the neighborhood of $3,000. I have some bills that I have not put in yet; some I have receipts for and some I have not. I got no receipt from railroads, for instance.

197 Q. Did you testify anything about your salary as president and *ex officio* superintendent commencing on the 1st day of January, 1878, and your expenses commencing at the same time and continuing until you ceased to do anything for the corporation?

A. No, sir; I did not.

Q. Was your testimony directed in that case to whether $10,000 worth of stock had been issued to you fraudulently or not?

A. Yes, sir; it was.

Q. Did you testify anything in regard to the value of your salary and the amount of your personal expenses between the 1st day of January, 1878, continuing as long as you acted as president of the company?

A. I don't think I did.

Q. Do you think your salary was worth $150.00 a month so long as you acted as president of the company?

A. Yes, sir; I do.

Cross-examination.

By Mr. SCHAEFFER:

Q. Was this certificate of incorporation of the St. Louis & Sandoval Coal & Mining Company recorded in *the* Marion county, State of Illinois?

A. I think it was; yes, sir. I sent it out for that purpose; I am not positive, but I think so.

Q. How much stock did you subscribe as one of the subscribers?

A. I think $380,000.

Q. How many shares?

A. 380 shares; $10 a share.

Q. You subscribed that amount of stock just as any of the other stockholders subscribed, I suppose, in good faith?

A. Yes, sir; for the benefit of the company; I subscribed
198 it for the benefit of the company.

Q. Was there anything said by you or any of the other stockholders or was there any indication made to the secretary or suggestion at the time that you subscribed that stock was to be held in trust for the company with the view of your selling it afterwards and applying the proceeds of the sale of stock to the advancement of the interests of the company?

A. There was not a word said about it; it was subscribed by me, and the amount that I took was sent to the commissioner—the amount of stock that each one took. I subscribed for nearly all of it and then distributed it to these men.

Q. The question I asked you was, was anything said about it that you should hold that stock and sell it to other parties and apply the proceeds to the interests of the company?

A. No, sir.

Q. There was nothing said about that?

A. No, sir.

Q. When and with whom was the arrangement afterwards made by which you should hold that stock and sell it as you sold it to apply the proceeds of the sale to the interests of the company?

A. That was done at the meeting at 614 N. 9th street, which I think was on the 20th of December; that is where the business meetings was held; that is where I got my information and power to work on—that is, instructions what to do with the stock.

Q. You do not mean to say that at that meeting there was a

change of the nature of your relation as stockholder to the company?

A. No, sir; I just held the $10,000 as trustee of the company—the whole of it; he had really issued to us only $100 apeice, just so as to become stockholders. We only had $100 each and were
199 issued $100 each, just so we could all be eligible stockholders. Each one of us were stockholders.

Q. At your stockholders' meetings how much of the stock did you vote?

A. I voted all I had at the time.

Q. How much was that?

A. 389 shares; that was the first meeting.

Q. Was that the only stockholders' meeting that you had?

A. No, sir; we had one more.

Q. When was that and where?

A. That was in East St. Louis.

Q. When?

A. I think somewhere along in December or the first of February at the East St. Louis hotel.

Q. What was the object of that meeting of stockholders at East St. Louis?

A. It was to regulate our business affairs of the company.

Q. Was that when you elected officers and directors?

A. No, sir; that was afterwards; it was just a called meeting; it was not the annual meeting; the annual meeting was on the 8th of December and this was the third meeting.

Q. Was this a stockholders' meeting or a directors' meeting?

A. They were stockholders and directors.

Q. You certainly know the distinction between a stockholders' meeting and a directors' meeting. Did you have more than one meeting of stockholders of the company during the time that the company was running?

A. Yes, sir; we had three.

Q. At the first meeting you voted 300 and some-odd shares?

A. Yes, sir.

Q. How many at the second?

200 A. I don't think I had so many as that. I had disposed of some of it.

Q. About how many?

A. I think $10,000.

Q. At the 3d meeting how many did you vote?

A. I don't think it varied any. I think it was about the same as at the second.

Q. Did Mr. Wharton have any stock then?

A. No, sir; he had those shares of stock that were sold to him, but it was not legal; it had no signature to it or seal.

Q. Did he at any time get any stock?

A. Yes, sir; he got $4,000 of paid-up stock from me.

Q. Did he pay anything for it?

A. No, sir; he got $10,000 of unpaid-up stock from the company,

from the St. Louis & Sandoval Coal & Mining Company, and paid $1,000 on it.

Q. He paid nothing to you or the company for the $4,000?

A. No, sir; not that I know of; he did not pay it to me.

Q. About the $1,000 that you spoke of as having been paid by his was the one to which Mr. Wellhoener referred that was handed back to him?

A. I don't know about the handing back or I never seen it. He paid that on the $10,000 worth of stock which he was to take.

Q. How do you know that Mr. Main, Mr. Edwards, and Mr. Seymour, in connection with Mr. Wellhoener, tried to sell that $4,000 worth of stock at 50 cents on the dollar?

A. I went right after that, in a week or two, to learn just where that went.

Q. How do you know that they did?

A. Parties that they represented the stock told me so, and
201 parties that had the stock told me that they had; Mr. Wharton and Mr. Wellhoener told me so.

Q. Did Mr. Edwards or Mr. Main or Mr. Reinhardt or any of those Sandoval stockholders ever tell you anything about the sale of that stock?

A. No, sir.

Q. Who issued you the $10,000 in paid-up stock?

A. It was done by the secretary, Henry Wellhoener, and True W. Blackman and John B. Mears.

Q. What did you do with that stock?

A. I have got it yet, sir.

Q. Did you not give your wife $5,000 worth of that stock?

A. Yes, sir.

Q. And you gave Mr. Wharton $4,000 worth?

A. Yes, sir.

Q. What became of the other thousand?

A. I gave it to Mr. Blackman to help aid in getting Mr. Wharton into it; that is what I called this meeting for on the 2d of May, to get my stock replaced and to report *of* the company what I had done for its benefit; a few days before the 2d of May this happened, and I wanted to reimburse myself for this stock.

Q. What did you mean in your answer to Mr. Carr's question when you said that "My books and my seal were stolen"?

A. It was mine before the company was organized; I bought it before we had a company, before there was anything done towards a company.

Q. Do you mean to say that you constituted the company?

A. I was the only one of the company, and the seal belonged to the company, and the books. I had bought them and charged them with it.

202 Q. Did Mr. Manning ever agree to take any stock from you?

A. No, sir.

Q. In what manner did the board of directors work against you?

A. They would not go to the place of meeting is the principal point, and appeared to hold kind of a conspiracy against me.

Q. How often were you at Sandoval in the interests of the company and when?

A. I cannot state exactly, but I must have been there some 25 or 30 times in the interests of the company; maybe 50 times; 30 or 40 times anyhow.

Q. When?

A. I commenced in 1877, and I have been going there up to 1885 for the benefit of the company.

Q. How often were you there before the organization and up to the time that work ceased there by Mr. Seymour for the company?

A. I cannot state just how many times; some 6 or 8 trips, I suppose; I was back and forth about 3 times a week, probably.

Q. When were you there the last time?

A. I think it has been 2 years now, about, since I was there.

Q. I mean during the existence of the corporation, the last time?

A. I had been operating for the company ever since 1877 up to 1885, August 5th.

Q. Have you ever stopped at Sandoval since 1882?

A. I always stop there, generally, but I have been busy attending to the company's business at Salem, Illinois.

Q. I mean did you get off the train and stop there any length of time?

A. Yes, sir; I have been off the train at the shaft.

203 Q. Since 1882?

A. Yes, sir; but I had no business there.

Q. When were you last there to do business for the company?

A. I don't think I have been there since 1878—some time in 1878; in May some time, I think, not February.

Q. How long were you engaged in mining rights?

A. I commenced in July, 1877, I think it was; about the 12th, I guess.

Q. Did you stay there right along then?

A. My business was there continually, but still I did not stay there all the time.

Q. Were you there more than 2 or 3 days before the organization of the company?

A. Yes, sir.

Q. How much more—I mean before the company was organized were you there more than 2 or 3 days; and, if so, how much more?

A. I was there several weeks; I was there one week when I never came to St. Louis at all.

Q. Is this not a fact, that those stockholders that lived at Sandoval secured those mining rights?

A. They never had anything to do with it, to my knowledge; not those mining rights that we are talking of. I went there to secure them, and had a called meeting and all those men were present, and we organized a committee that night and there were 6 committeemen appointed, and 3 went one way and 3 the other way; they worked and did all they could for the enterprise, for they

wanted to get a shaft sunk, and that was the way it begun. I was the leading man and had all my deeds ready for them to sign that night. I had written notices sent out that I would come out there and make a speech, and I went out there and I got there at
204 10 or 12 o'clock that night. We engaged the public schoolhouse there and we had a meeting of the whole neighborhood and vicinity, and I sent notices all over the neighborhood, all over the country there, and that night we appointed this committee of 6 to aid me in the enterprise; that if I would go ahead with the enterprise they would donate so much royalty.

Q. Did you pay Mr. Ewing for this 2 acres of land?

A. I paid the money into the hands of the secretary. I did not pay him personally.

Q. Did you, as president of the company, give Mr. Ewing a note for the land—give the company's note for the 2 acres of land?

A. I think not, sir; I paid for it and got the deed.

Q. At the time you got the deed did you give a note for the land then?

A. No, sir.

Q. You paid your money?

A. Yes, sir; paid the money to the secretary of the company—paid it for the company and had it put in the company's name, and the deed is in the company's name.

Q. Whose money was it that paid for the land?

A. It was my money, my individual money.

Q. What efforts did you make to sell stock of the company after the suit was commenced?

A. I did considerable, but I could not accomplish anything at all, for it burst up so I could not do anything; they would laugh at me; there was litigation and I could not do anything.

Q. When was it that you performed the services and paid out the several moneys that you claim to have paid out for the interest of the company?

A. I commenced, as I told you, in July, and I was paying out all the time.

205 Q. Up to what time?

A. I paid out right straight along. I paid out money from the time I commenced until I quit. I have been paying out money for them for the last 6 years and I never got a cent back in my life.

Q. What money, if any, did you pay out for the company after the 2d day of May, 1878?

A. I have been working for them ever since.

Q. I asked you what money you paid out for them and to whom and what for since the date.

A. I have been trying to hold the thing together in court. All the money I have paid out was in the court for them. I have invested several thousand dollars for the benefit of the company to try to keep it together.

Q. You mean to say you have expended in lawyers' fees and

court expenses that amount of money in the case that was pending in the circuit court of Marion county?

A. A good deal of it in that way to protect the company's rights.

Q. Did you ever at any time have any action of the board of directors by which they authorized you to prosecute those suits?

A. Yes, sir; we have had regular meetings ever since, annual meetings for the last 5 years, and we always made it the rule for me to carry this on.

Q. Who was that board of directors?

A. We have regular by-laws here. The same directors are in there.

Q. Did you notify Mr. Main of any meeting of the board of directors after May?

A. Yes, sir; I have given him several notices after that, but he paid no attention to them; gave him notices just as if he was in all the time. He was in until another was duly elected and notified.

206 Q. Have you a report of your proceedings since that time?

A. Yes, sir; regular books.

Q. Where is it?

A. I have got it here in the city. I have got our regular books yet, the proceedings of the meetings. We advertised for annual meetings every year in the daily papers in East St. Louis, Illinois.

Q. What stockholders attended those meetings?

A. The same old stockholders that went in first, some of them, Henry Wellhoener, John B. Mears, William Roll, and myself.

Q. Did any of the Sandoval stockholders ever attend?

A. No, sir; I gave them notice all the time, published it in the East St. Louis daily newspaper, and kept — in for two weeks.

Q. Then these stockholders that met there with you and purported to keep up the organization were all men who were declared by the circuit court to be not valid stockholders?

A. No, sir; Henry Wellhoener was here with us and attended meetings. Mr. Main would not come. He said I had no authority to give him notice and therefore he would not pay any attention to it. I never saw Isaac Main since the 2d day of May until I saw him in court.

Q. You still keep up the organization?

A. No, sir; when the receiver was discharged we thought we were all discharged then. When the receiver was discharged by the Supreme Court we ceased. We carried it up to 1885, August 5th.

Q. Was not the meeting at which the credit of $10,000 was voted to you called at your motion?

A. No, sir; I never knew anything about it at all; it was all fixed up between them in that room some way or another.

Q. Did you not call the meetings?

A. Yes, sir; I called the meeting to transact business. I

207 was requested by the directors to call that meeting to

straighten up the affairs of the company so that we would all be on an equal footing.

Q. Did you not talk the matter of those resolutions over with Mr. Wellhoener the day before the meeting?

A. No, sir; I did not see Mr. Wellhoener, only just at night, and did not have any conversation with him about the arrangements.

Q. On the strength of those resolutions the $10,000 of paid-up stock was issued to you. Is that so?

A. I suppose so, sir. I did not know what resolutions they passed while I was in the room.

Mr. CARR:

Q. They showed you they resolutions when you came in, did they?

A. Yes, sir.

Mr. SCHAEFFER:

Q. The services and money expended that you testified to in the case in the circuit court in Marion county, Illinois, were they the same services and expedentures of money that you now testify to in this case?

A. Yes, sir.

Q. In that case your testimony went to show that the stock issued to you as paid-up stock was not fraudulently issued, because you had earned it by your services and money expended; is that it?

A. I think it was.

Q. Now, you claim pay for those same services and money expended for the old company of these stockholders of the new company?

A. Yes, sir; I did not get anything, for the stock is worthless. I did not get neither money nor stock.

Q. Will you state now upon what consideration this $10,000 worth of paid-up stock was given to you?

208 A. It was for mining rights and money expended therefor, commencing, as I have stated, in July in getting up these mining rights, and I considered them very valuable at that time, which they were. I could have got from $60,000 to $75,000 for my services up to that date, if I did not form a company, for the mining rights that I secured.

Q. You stated in your examination-in-chief that you expended in the neighborhood of $3,000 in getting up the organization of the company, securing the mining rights, and for traveling expenses. Now state what made up that aggregate in the neighborhood of $3,000.

A. I could not itemize it just now, but I have a memorandum of it somewhere. I have got the minutes of it some place, but I have not got the memorandum with me.

Q. Then I understand you to say all that you have paid out or that you have done in the interests of the company since the 2d of May, 1878, was in litigation or in lawsuits?

A. No, sir.

Q. What else?

A. I have items of many things, of money and other things, that I have got a memorandum of.

Q. I want to know if you have expended anything for the company since—what it was since the 2nd of May, 1878. Did you expend any money or services towards furthering the interests of the company except for the purposes of litigation?

A. It was principally in litigation and to keep the company together, as I have stated, the money spent since the 2nd of May, 1878.

Q. Has the company done anything since that time?

A. No, sir; it was tied up in court.

209 Q. When did the old company, the St. Louis & Sandoval Coal & Mining Company, cease doing business?

A. We ceased doing business in 1885; we ceased mining. That was the last business we did.

Q. I mean when it ceased doing business in the line of the undertaking for which it was organized.

A. We have not ceased yet, but the court has stopped us for awhile, but it is still in existance, but it was dissolved in 1885. We worked up to August 5th, 1885.

Q. I want to know whether the old company ever did anything by way of securing lands—operating the coal mine or selling coal—since March, 1878.

A. We had all the lands secured that we wanted at present.

Q. I want to know if the old company ever did anything by way of securing the lands—operating the coal mine or selling coal—since March, 1878.

A. I presume they have, sir.

Q. What?

A. I think some of them are mining it out now—some of the old company.

Signature waived by agreement of counsel.

Plaintiff here introduced in evidence the deposition of George W. Wharton taken in the case of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois, and which is — the words and figures as follows:

GEORGE WHARTON, of lawful age, being produced, sworn, and examined, deposeth and saith:

210 Direct examination by Mr. MILLARD:

My name is George Wharton; I am 63 years of age; I reside in the city of St. Louis and have resided there for the last 40 years.

Q. What business, if any, are you engaged in?

A. I am in the real-estate business, but it don't amount to much. I am not doing much of anything at present.

Q. Did you have any connection with the St. Louis & Sandoval Coal & Mining Company?

A. Yes, sir.

Q. I wish you could give us a narrative of the matter. Commence by stating how you became connected with it and what happened while you were associated with it.

A. On the first day of May, 1878, I made an arrangement with Mr. Townsent, who was then president of the St. Louis & Sandoval Coal & Mining Company, by which he was to give me $4,000 worth of paid-up stock and I was to take $10,000 worth of the original stock.

Q. Unpaid stock?

A. Unpaid stock, and pay ten per cent. on that, as the amount had been assessed on the other stock. I had got my arrangements all made, and a man by the name of Manning was to take from $15,000 to $25,000 worth of that stock, and he and I were going in there to put things through. Well, I got $4,000 worth of stock; went to the secretary and gave him a certified check on the United States Saving Institution for $1,000—I think that was on the 1st day of May—and he was to give me that $10,000 worth of stock. I waited all the first day, and on the 2d day of May I asked him for my stock. He had got my stock and had kept it from the first until the 2nd, and I told him that he either had to give me my stock or give me my money back, and if he hadn't have done it I would have gone and got a policeman and had him arrested
211 for getting money under false pretenses. That was my intention when I asked him for my stock or my money. They had got my money and I couldn't get a dollar's worth of stock signed to me by the president, as somebody had stolen the seal. He couldn't sign it or wouldn't sign it or something——

Q. Townsend wouldn't?

A. No, sir; he said he had no seal; that it had been stolen. Well, we went over in East St. Louis, and they were going to make me president, and did make me president.

Q. That was May 2d, according to this record (referring to book)?

A. Yes, sir; May 2nd they made me president there, but I had no stock. I got $4,000 worth of stock from him, and I really believe that I could hold that stock if I wanted to, because I made the agreement with him, and if I took $10,000 worth of stock and run the machine over there and got this other man Manning in with me that he would give me the $4,000 of paid-up stock. I gave my money and came up to my part of the contract, but they couldn't give me my money—$10,000 worth of stock—that they had got their money for. They had stolen the seal, and I guess even the books were gone. We had a meeting over there in East St. Louis, and——

Q. Who did you meet with there?

A. I met Wellhoener, Blackman, Mears, and Seymour.

Q. Was Seymour there?

A. Yes, sir.

Q. Do you remember whether Dr. Edwards was there?

A. And I believe Dr. Edwards was there.

Q. Now who were claiming to be directors at that time?

A. I think there were four—Wellhoener, Mane, Blackman, and Mears.

212 Q. Mr. Wellhoener was the secretary, was he not?

A. Yes, sir; he was secretary, and the reason that I got my money back again was because I found out I was in a bad nest. I thought the best plan that I could follow was to get my money, and if he had not given it to me I would have got a policeman. I had made up my mind that if he didn't give — my money that I would go on Fourth street and get a policeman and have him arrested.

Q. Townsend showed no bad faith in the matter so far as he was concerned, did he?

A. No, sir; he gave me $4,000 worth of stock.

Q. He couldn't give you the other stock because there was no seal to put on the certificate?

Objected to.

Q. If he had signed the stock he had no seal, and somebody had stolen the company's seal.

Q. When you went over to East St. Louis to this meeting, did you know at that time that they were engaged in a conspiracy to break this company up?

A. I know that they were in a conspiracy to throw Townsend out altogether, and that was what they wanted me president for, and I began to think that if they would do a dirty trick to him that they would do the same by me if they had the chance. Manning and myself made arrangements to get money to run the business. I had made arrangements for my share, and I know that he was amply able, as he was just going out of the life insurance business and he made a good deal of money, and I was afraid when we got the shaft sunk and everything already *and* they would play some kind of a trick on us after we had spent our money. I was afraid that the Sandoval men wanted to get the money from St. Louis to complete the shaft and would then kick us out. Then there

213 was another feature I saw in it. They had held no meeting to put Townsend out, and I could see that he had done nothing to be put out, only that he hadn't got the money and couldn't get it. Of course I don't know, but I suppose that he had paid in all he could. But at any rate the thing had stopped for the want of money. Wellhoener wrote for Seymour, the man that dug the shaft, to come and get his money, but when I saw this trick going on I began to think that I might get my foot in it and left.

Q. Well, Mr. Townsend had made *no* arrangements with you and Manning by which ample money had been secured to carry that thing through if they had carried it out in good faith, had he not?

A. Yes, sir; there is no doubt of that.

Q. And that was only prevented by this combination or conspiracy to throw him out?

Objected to.

A. Yes, sir.

Q. What reason did Wellhoener give for not issuing the stock to you and putting the seal on it?

A. He had the stock wrote out and done all he could do. He couldn't get the signature of the president, and the seal was gone. He done his part on the first day of May. He was all right.

Q. Wellhoener wrote the stock out?

A. He wrote the stock all out, ready for signing and sealing.

Q. What became of the seal?

A. I don't know; it slipped out.

Mr. GOODNOW: They never had one.

The WITNESS: Oh, yes; I saw the seal myself.

Q. Do you remember seeing the seal over there at the meeting at East St. Louis?

214 A. Well, now, I don't know whether I did or not. I think I heard something said about it. I began to smell a rat, anyway.

Q. Do you remember Main coming over there in great glee, saying that he had the books, seal, and everything?

A. Yes; I believe that he did say that. I now recollect that he did say that.

Q. Now, state what was said in this meeting by Main and Edwards in regard to the success that they had in foiling a meeting that Townsend had called here as president of the company and getting in a position where they could hold one over there and throw him out.

Objected to.

A. Well, in what way do you want it?

Q. What did Mane say about that?

A. Oh, Main was like the balance of them; they were all for throwing Townsend out.

Q. And as far as you could see they had no ground for that at all?

Objected to.

A. I saw nothing, only that they said that Townsend had said that he had plenty of money, and that when they came to need it he hadn't got it and couldn't raise it.

Q. Did they know that the arrangement had been made with you and Manning?

A. Yes, sir, because they had my thousand-dollar check—no, I got it back just before the meeting commenced, but they had it till just before the meeting. They knew that I had deposited the thousand dollars, and I told them all about Mr. Manning, who was a very able man.

Q. You told Main and Edwards and those fellows all about it?

A. Oh, yes; they knew all about it.

215 Q. And you went so far as to send for Seymour, who was the contractor, to come in and get his money?

A. Of course I did, because I had made my arrangements for getting the money.

Q. Now, will you tell what reason these gentlemen gave for not allowing Townsend to carry out the arrangements that he had made with Manning?

A. I don't exactly know. All that they seemed to say was that they didn't want Townsend there; that he had deceived them about saying that he had money when he had none.

Q. And he had provided this money and didn't satisfy them?

A. No; I guess not. They objected to paying him the salary that he was receiving. I forgot the amount that they were paying him, but I think it was $100 per month. They didn't want to pay that, and when they elected me president over on the other side they expected that I would pay all my expenses backward and forward from St. Louis and superintend their business over there and not get a cent, and I told them that they couldn't come in it.

Q. Do you recollect whether they made any propositions to Seymour in regard to paying him off?

A. They told him that he would get his money; that is all I know.

Q. Did Seymour know anything about this arrangement that Townsend made with you to furnish money?

A. Yes, sir; because I told him.

Q. He was a stockholder himself, was he not?

A. Yes, sir; Mr. Seymour was the man that sunk the shaft.

Mr. GOODNOW: He had $2,000 in it.

The WITNESS: I don't know what it was, I am sure.

Q. The record over there shows that they passed a resolution?

216 A. They passed a good many resolutions there that I knew were bogus.

Q. You never accepted the office of president, did you?

A. Yes; I staid there amongst them. I knew that every bit of it was illegal; that I was president for the company and didn't own a dollar's worth of stock, and that the by-laws wouldn't allow a man to be president of the company unless he owned stock.

Mr. GOODNOW: You had the $4,000 of paid-up stock?

A. I had that.

Q. Do you remember who asked you to go over to East St. Louis?

A. Several of them—Blackman and Main—and pretty much all of them asked me to go over.

Q. Who called that meeting in East St. Louis?

A. I think the secretary called it.

Q. Did they just meet together and start off over there?

A. We started from this side and went over and organized ourselves in a beer-house. I told them that was the first time that I had ever been in a beer-house to attend to such business as that, and that it would be the last; that if I went to a beer-house I went to drink.

Q. Did Main and his associates, before they went to East St. Louis, go into Wingate's office, a lawyer here, and take his advice as to the propriety and legality of holding a meeting in East St. Louis?

A. I believe they did. Blackman seemed to be the officiating spirit; he said that it was all right.

Q. Do you know whether there was anything said in relation to throwing the whole company and its affairs into court and winding it up?

A. They were talking about selling it out.

Q. They did talk about selling it out?

217 A. Yes, sir; Main and some doctor over there by the name of Edwards were talking about selling it out and selling Townsend out and I told them that I didn't see how they could get clear of him as president according to the law of Illinois, and they said that they had a way that they could do it by selling out the company.

Q. I would like you to state now from information that you gained and knowledge that you had of that whole matter whether or not it was a combination or conspiracy on the part of those men to throw Townsend out and forfeit his stock.

Objected to.

A. Yes; it was made up amongst them to throw Townsend out and get me in there and get his stock, so that he would be no more entitled as stockholder to own the presidency. I had the last dollar of his stock when I took the $4,000, because the balance, as I understand, belonged to his wife.

Q. That is what they said?

A. That was what they said, that when I got this $4,000 that it left him without any stock, and that he was no more eligible to the presidency of the company.

Q. And they aimed to elect another president?

A. Yes, sir.

Q. Now, in the event that you and Manning didn't put your money into this concern and carry it on successfully they were going to throw it into court and oust Townsend in that way?

A. Yes, sir; they were going to oust him, going to — clear of him. There is no doubt about that?

Q. Main was pretty active in this thing, was he not?

A. Main seemed to be the leading spirit, and also some doctor there.

218 Q. Dr. Edwards?

A. Yes; I think that was his name.

Q. Well, after the meeting was through, do you recollect of Main or Edwards making a declaration to this effect: That they had now got rid of Townsend and would send the whole thing into court; buy it in and divide it up?

A. I don't know that I heard it in that way, that shape.

Q. State what shape you heard it in.

A. They said that now they had got rid of Townsend that they had a way to sell it and buy it in and thereby overcome this clause in the statute of Illinois that gave him the privilege of being president one year. What they were after more than anything else was to try to overcome the law in Illinois that gave him the especial benefit of the presidency for one year.

Q. They couldn't get him out of his office as president in any other way?

A. No, sir; only in selling him out.

Q. Seymour was somewhat concerned in that, was he not?

A. I don't know. Seymour didn't say much in the meeting.

Q. Did they give Seymour any assurance of what was coming to him?

A. I guess not. I don't know what they did. They said that they would make it all right with him. They thought that I was going to pay that thousand-dollar check back again, but they were very much mistaken. As soon as that check struck my pocket I knew that it would never go out of my possession again for that stock. I told Wellhoener to give me the check and when I got the thing all right I might give it back again, and when we were coming from the meeting he wanted to know if I would give the thousand-dollar check back again for other stock and I said to him,

219 "Do you think that I am a fool, that I would give my money away and not know what I was giving it for?" Those are the words that I said to him.

Q. Of course, you didn't give the check back?

A. No, sir.

Q. Do you recollect anything transpiring at the meeting with reference to a suit that was to be brought by Seymour against the company to sell the whole thing out?

A. I heard something to the effect that he was going to bring suit against the company for labor.

Q. And Dr. Edwards and Main were to go his security?

A. Yes, sir.

Q. Well, if anything more happened there it only served to make a bad impression on your mind, I suppose?

Plaintiff objects.

A. My impression was that if I put my money in there that I could never get it out. That is the way that it looked *at* me.

Q. Well, you gave the $4,000 of stock back to Townsend, did you not?

A. Yes, sir.

Q. Did you go out there and look at that property before you made the investment?

A. Yes, sir.

Q. Did you regard it as a valuable enterprise at that time?

A. I thought that if it was properly carried out it would make money.

Q. How far had they got the shaft down when you got there?

A. I don't know how much, but about 100 feet, I suppose.

Q. Well, the company have extensive mining rights there, did it not?

A. I believe they had some hundreds of acres.

220 Q. Near a thousand?

A. Yes, sir; I don't think the company had much assests.

Q. What was the whole property of the company worth—these mining rights and everything else?

A. You couldn't put no value on it, because there was nothing struck yet.

Q. If you had wanted to buy out the mining rights of the company at that time what would you have given them?

A. I had no idea of buying it out. I suppose all the rights, titles, and interests of the company at that time might probably be worth $20,000 or $30,000. The mining rights of the company is worth an immense sum.

Q. There is no doubt, is there, but what the mining rights that the company had there at that time was worth $5,000 or 10,000?

Plaintiff objects.

A. I have been in the coal-mining labor and understand it. And acre of that ground would have 800,000 bushels of coal in it at least and from that to one million. I estimate every square foot of coal as a bushel. I believe the vein there is 7 feet thick, isn't it?

Q. No; about 6. Down at Centralia it is seven and a half feet. What I want to know is this: Would it have been safe for you or any other business man to have bought the mining rights and property of the company at the time the meeting was held for $5,000 or $10,000?

A. Yes, sir; I would have paid that much for all their rights, title, and interest. I understood the vein was seven and one-half feet thick.

221 Cross-examination by Mr. GOODNOW:

Q. Didn't I understand you to say that you were present at this meeting in May, 1878?

A. Yes, sir.

Q. The 2nd day of May, 1878?

A. Yes, sir.

Q. At that meeting you were elected president of the company, were you not?

A. Yes, sir.

Q. And you assumed the duties there as president?

A. Yes, sir.

Q. Was not the question propounded at that meeting as to whether or not Townsend had any interest on the St. Louis & Sandoval Coal & Mining Company?

A. Yes, sir.

Q. And it was stated that he had no interest?

A. Yes, sir.

Q. In other words, that he had sold out his $10,000 of paid-up stock, $4,000 of which they had got; $5,000 he had in his wife's name, and the balance he had forfeited by having failed to pay his assessments?

A. Something to that effect.

Q. And that was the reason that it was stated that he had no interest in the company, was it not?

A. Yes, sir.

Q. Well, of course if he had no interest he could not be president, and then it was that you were elected president of the company, was it not?

A. Yes, sir.

222 *A. Yes, sir.*

Q. Townsend had originally taken a large amount of stock in the concern, hadn't he?

A. Yes, sir.

Q. It is a fact, is it not, that he originally took $39,300 worth of stock in the company?

A. Yes, sir.

Q. You understand from him that he had taken this large amount of stock?

A. Yes, sir; I didn't know that. I thought that it belonged to the company. I was to take from the company $10,000 worth of stock.

Q. You made that arrangement with Townsend?

A. Yes, sir.

Q. And he gave you $4,000 of paid-up stock in consideration that you would take this $10,000 of stock from the company?

A. Yes, sir.

Q. I understood you to say that Mr. Wellhoener did everything that he could do?

A. Yes, sir.

Q. Had you no talk with him in reference to the purchase?

A. No.

Q. Why do you say that you were going to have him arrested when he made no representations to you about it — all?

A. I was going to have him arrested for the one thousand dollars if he had not given it back.

Q. I understand you to say that Wellhoener had made no representations to you at all prior to the time that you gave him the check for a thousand dollars?

223 A. I had talked with him a good deal.

Q. But your contract and agreement about this $10,000 worth of stock was made with Townsend, wasn't it?

A. No, sir; it was made with Blackman; Blackman was the man who came to me and said that if I would get $10,000 worth of stock that he could get me $4,000 worth of paid-up stock of Townsend, which would give me $14,000 worth of stock.

Q. Didn't you know at the time you were purchasing that stock from Townsend instead of the company?

A. No, sir; I did not.

Q. Didn't you know that the company had no stock to sell?

A. I didn't know it until afterwards.

Q. You thought that it was the company's stock at the time that you made this transaction with Blackman?

Q. Was Blackman acting for Townsend?

A. I don't know what he was acting for. He acted between me and Townsend and got the thing up to $4,000. He offered me

$1,000 first and then $2,000, and I was going to let the thing drop and Blackman told me that I could get $4,000.

Q. Blackman got $1,000 of paid-up stock?

A. I believe he did.

Q. He got $1,000 of this $5,000 and you were to have $4,000?

A. Yes, sir.

Q. The certificate of stock for that $4,000 was made out to you, was it not?

A. I believe it was put on the books.

Q. It was put on the certificate, was it not?

A. Yes, sir.

Q. And you supposed all the time that you were buying
224 this $10,000 worth of stock from the company?

A. I did; I thought that it belonged to the company.

Q. Townsend at that time had never revealed to you the fact that he was selling you the stock?

A. No; I didn't know that he owned the stock until afterwards, and that I heard from Main; Main told me that he had all this stock.

Q. That is, that Townsend had it?

A. Yes, sir; I was surprised to find that he had all the company's stock and had to pay an assessment on the whole of it.

Q. Edwards and Main had never said anything to you about purchasing this stock, had they?

A. No; Blackman was the man.

Q. Blackman was the man that interceded between you and Townsend?

A. Yes, sir.

Q. So that Main and none of these Sandoval men never said anything to you about this stock prior to the time that you made the arrangement with Blackman?

A. No; they never did.

Q. What was ascertained in that meeting in East St. Louis, that Townsend had forfeited his stock in the concern before you were elected president?

A. Yes, sir.

Q. That is a fact?

A. Yes, sir.

Q. In your proceedings at that meeting wasn't the fact talked about that Townsend couldn't pay any assessments on his stock?

A. Yes, sir.

225 Q. That was talked over?

A. Yes, sir.

Q. That he couldn't and hadn't paid any; wasn't that it?

A. Yes, sir.

Q. That he wasn't worth anything and couldn't pay anything on his stock?

A. Yes, sir.

Q. Was that the understanding?

A. Yes, sir; that is what they said.

Q. And that he hadn't paid any assessment on his stock nor could not pay anything?

A. That is what they said.

Q. Wasn't that the reason why they wanted to get this man Townsend out of the way?

A. That is what they said. We had made arrangements for money, though.

Q. But they said that he was worth nothing; that he had no means whatever and he couldn't pay anything, and that was the reason that they wanted to get him out of ther-?

A. Yes, sir.

Q. Now, isn't it a fact that the only means he had of raising money was by getting you men to buy stock of him?

A. Yes, sir.

Q. And wasn't that exactly what he was doing?

A. Yes, sir.

Q. The capital stock of this concern was $50,000, was it not?

A. Yes, sir.

Q. And Townsend had subscribed $39,300 of that stock?

A. Yes, sir.

226 Q. Now, then, he was worth nothing; he couldn't pay his assessments, and was selling out to you men, wasn't he?

A. Yes, sir.

Q. At a bonus, in order to get money to go on?

A. Yes, sir.

Q. Now, if he failed to sell this stock to you men and get money, of course he had none to pay in on this stock, had he?

A. He had some property here, for I collected rents for him at one time.

Q. Don't you know there are judgments and executions in this court against him, and that no property has been found to satisfy them?

A. I know nothing about that.

Q. Wasn't all that talked about over there at the meeting?

A. Yes, sir.

Q. That was a meeting of directors, was it not?

A. Yes, sir.

Q. And this was all talked over there?

A. Yes, sir.

Q. You say that you think there was a conspiricy in that meeting. You simply surmise that, do you not?

A. I know that; that there was.

Q. Now, then, if you know it, I wish you would state the reasons why you know it.

A. Because they told me that they wanted to get him out. As soon as I was elected president they made arrangements to get all the stock out of his hands, so that he would no longer be eligible as president, and then oust him. He had $4,000, Blackman had $1,000, and $5,000 was in his wife's name; that made $10,000.

Q. Wasn't it also stated among you that this $10,000 of

227 paid-up stock was a fraudulent transaction on the part of

Townsend and the company, and that he had never paid anything for it?

A. They said that he had never paid anything for it. I saw in the minutes of a meeting where they had given it to him.

Q. What did they give it to him for?

A. For his services.

Q. I am asking you what was said about it in this meeting; wasn't it talked over among you that it was a fraudulent transaction in getting those $10,000?

A. Yes, sir; they said so.

Q. They said that he had never rendered any services for the company or given any money for this $10,000, didn't they?

A. Yes, sir.

Q. Now, I will ask you this: If it was a fact that this company had fraudulently given Mr. Townsend $10,000 of paid-up stock if you would be willing to put your money into a concern of that kind?

A. I didn't believe that it was fraudulent.

Q. That is not the question; admitting that he had fraudulently obtained $10,000 worth of paid-up stock in the concern, if you would be willing to put your money in a thing of that kind?

A. No; of course not.

Q. The conspiracy, as you think, was simply to get rid of Townsend?

A. Yes, sir.

Q. Assuming that Townsend got this $10,000 worth of paid-up stock fraudulently, that he was worth nothing and had failed to pay up his assessments, would you not want to get rid of him?

A. Yes, sir; if he had got the stock fraudulently.

Q. And if he was worth nothing and couldn't pay the balance of his stock that he had in the concern, of course you would
228 want to get him out?

A. Certainly.

Q. You said something about the seal; do you know it to be the fact that they ever had a seal?

A. Yes, sir; I saw it and——

Q. Can you describe it?

A. No, I can't describe it; I have seen its impression on paper and have handled it.

Q. I didn't get through with you in regard to Wellhoener. Wellhoener did nothing towards inducing you to give this check to him at all?

A. Blackman was the man; of course Wellhoener was anxious for us to get the money, so the thing could go on; there was nothing wrong in what he wanted to do. He wanted to get the money so they could pay off Seymour and let the work go on. He had done all he could; had paid every dollar up that he could get; he paid up too much, in fact.

Q. Was it understood at the time of this meeting that the company was largely in debt?

A. It was in debt; $1,600, I think.

Q. Wasn't it $1,600 to Seymour besides other indebtedness?

A. I don't think there was much besides; there might have been some little indebtedness.

Q. The work was stopped for the want of means, had it not?

A. Yes, sir.

Q. And so far as you know it has never been resumed?

A. I know nothing about that.

Q. From that time on you abandoned it?

A. I abandoned the whole thing; I let it drop like a hot potato.

Q. You gave the $4,000 worth of stock to Townsend?

229 A. Yes, sir.

Q. You think the certificate was cancelled?

A. I think so; I am pretty sure that it was done up right, anyhow.

Q. Well, at any rate, you claimed that you now have no interest in the concern?

A. Well, no; I gave the stock back again.

Q. You gave the stock back to him?

A. Yes, sir.

Q. This $4,000 was paid-up stock?

A. Yes, sir.

Q. How long after this meeting on the 2nd day of May was it that you gave him back this $4,000 worth of paid-up stock?

A. Well, I think about two weeks after. He didn't seem to want to take it and kept out of the way. I just took it and handed it to him one day and told him that he could take it; that I didn't want it. I had to press it on him; he didn't want to take it anyhow.

Q. Mr. Wellhoener, after you told him that you would do nothing more in the company — surrendered this check to you?

A. Yes.

Q. You say you couldn't get this $10,000 worth of stock. Why couldn't you get it?

A. Because there was no signature of the president and no seal.

Q. It could have been done after you got over the river, could'n't it?

A. I couldn't sign my own stock, for I was president.

Q. But you could have elected somebody else president and had them sign it, as far as that is concerned?

A. About that time I began to weaken.

Q. About that time you didn't want to take it?

A. No, sir.

230 Q. You found out since that the company had no stock?

A. I found out that Townsend had taken all the stock.

Q. Then it wasn't necessary, so far as you were concerned, that the president should sign any stock to you, was it? If you purchased Townsend's stock all that he had to do was to turn it over to you?

A. Yes, sir.

Q. Then the reason why you didn't want the stock was because you wanted the president and secretary to sign it?

A. Yes, and the seal.

Q. But, according to your purchase, Townsend was really the man to have signed your stock?

A. Yes, sir.

Q. You found that the company was going to burst up, didn't you?

A. No, sir.

Q. Then, why didn't you go and take the stock?

A. Because I didn't want to be found in there; I thought that I might lose what I put in.

Q. Why did you think you might lose what you put in?

A. Well, I had seen a trick or two.

Q. Well, now, what were those tricks?

A. Well, one thing was the fact that Townsend was being put out unjustly.

Q. If Townsend had no stock there he had no right to be there, had he?

A. Well, it was a trick and a scheme to get him out.

Q. I wish you would state what that scheme was.

A. To get all the stock out of his hands.

Q. How could they get it out of his hands if he was not willing to sell it to them?

231 A. It was a trick to oust him.

Q. Wasn't it stated there in the meeting that Townsend had forfeited or sold out all the stock that he had in the concern?

A. Yes, sir.

Q. Except Wellhoener, was it not understood in that meeting that the St. Louis stockholders had paid nothing?

A. No; it was not put in that way.

Q. How long have you been engaged in the real-estate business?

A. For about five or seven years.

Q. What business were you engaged in prior to that time?

A. River business.

Q. Steamboating?

A. Yes, sir.

Q. You have nothing to do with the sinking of a coal shaft?

A. No, sir; but I have leased a coal mine over on the other side and have been working at that a-l summer, and am pretty well posted in coal mining.

Q. How many years have you been engaged in that kind of business?

A. One year.

Q. And that is the last year?

A. Yes, sir.

Q. You had no experience when you were out at Sandoval examining the location there?

A. No, sir.

Q. You knew nothing about the value of such a concern?

A. Oh, yes; I knew the value of machinery and buildings.

Q. But you knew nothing about the value of the mining rights and the sinking of shafts?

A. I don't know as I did then as well as I do now. I have
232 since learned how much coal there is in an acre. If you will tell me the thickness I can tell you how many bushels of coal there is to an acre.

Q. Do you know what land is worth in and about Sandoval?

A. I made a sale of the very land *is* where the coal shaft is. A party by the name of Loving sold it, but I forget how much an acre it was put in at.

Q. The only evidence of a conspiracy that you saw in that meeting was the fact that they tried to get rid of Townsend, wasn't it?

A. They wanted to get Townsend out of the company and then let me take a turn a little while and then they would have bounced me.

Q. That was your opinion?

A. That was my opinion after I saw what was going on.

Q. You didn't do anything wrong while you were acting as president of the concern?

A. No; but I knew that it was all illegal. I thought that was a good joke anyhow, and that I would pass it off as well as they did. I just laughed up my sleeve, as sure as you are born.

Q. You considered it all a myth, the whole concern from beginning to end?

A. I did. I thought if I got out of that meeting once that they would never catch me coming over there again, and I told them so.

Redirect examination by Mr. MILLARD:

Q. You were asked about what council on the other side calls "fraudulent stock" that had been issued to Townsend. What had that stock been issued to him for?

233 A. Which stock?

Q. The $10,000 worth of paid-up stock.

A. I understand it was given to him for his services in getting the mining rights and organizing it; that is what I understood from him.

Q. Wasn't Main one of the directors who helped issue that stock to him?

A. I think he was.

Q. Did Main say that he was engaged in a fraudulent transaction?

A. No; I understood that the directors had given him this stock.

Q. But they had passed a resolution that it was paid-up stock?

A. Yes, sir.

Q. Townsend always acted and admitted to you that a large portion of this stock held by him was to be transferred to different persons in order to raise money to carry on the work, did he not?

A. Yes, sir; when the stock was disposed — the company was to get the money, as I understood.

Recross-examination by Mr. GOODNOW:

Q. But you understood that from him?

A. Yes, sir.

Mr. MILLARD: Although this stock was in his name and subscribed by him, still when it was disposed of to you the company was to get the money?

A. Yes, sir; Mr. Seymour was to get the money.

Q. A great deal has been asked you in reference to the objection that you had in not taking this stock. The objection was not your inability to get the stock, but the dislike that you had for
234 these men in carrying out what you thought to be a conspiracy?

A. Yes, sir; I got dissatisfied with the men and the way that it was being carried on.

(Signed) GEORGE WHARTON.

Subscribed and sworn to before me this 18th day of February, A. D. 1881, and qualified for a term ending October 20th, 1882.

[SEAL.] (Signed) GEORGE B. GIVENS,
Notary Public.

Plaintiff also introduced in evidence a duly certified copy of the the record in the case of the St. Louis & Sandoval Coal & Mining Company & others against the Sandoval Coal & Mining Company & others as certified by the clerk of the supreme court for the southern grand division of the State of Illinois, at Mt. Vernon, with the certificate of the clerk, J. O. Chance, dated November 18th, 1887, and which is marked Exhibit "I" and hereto attached.

Not being able to complete taking these depositions by reason of absence of witnesses, by agreement of council on both sides I adjourn the further taking of the same till Wednesday, December 26th, 1888, then to be continued at the same place and between the same hours as authorized by the commission to myself as special examiner.

C. C. COWEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 26th day of December, 1888, I continued the taking of said depositions as follows:—James, Carr, Esq., appearing for the plaintiff and M.
235 Schaeffer, Esq., appearing for the defendants.

The attorney for the plaintiff having announced the close of depositions on the part of the plaintiff to this cause, the defendants, by their council, gave verbal notice, which was acknowledged by the attorney for the plaintiff, that depositions proceed forthwith on the part of the defendants, whereupon the following proceedings were had:

The said LAMBERT NOLAN, being first duly sworn and cautioned by me, as special examiner, as a witness of the said cause on behalf of the defendants, previous to the commencement of his examination to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the plaintiff and defendants so far as he should be interrogated, testified as follows:

Direct examination by Mr. SCHAEFFER:

Q. Please state your name, age, residence, and occupation.

A. My name is Lambert Nolan; age, 71 — and two months; by occupation I am agent of the Illinois Central railroad, at Sandoval, Illinois.

Q. Were you a stockholder in the St. Louis & Sandoval Coal & Mining Company?

A. Yes, sir; I had the honor to hold one share.

Q. Please state who got up the organization of that company. State all about the circumstances under which you were induced to take stock in the company.

A. We started a few of us there to get up the coal shaft, but we were not able by ourselves to do it, and then Mr. Townsend, from
236 St. Louis, came out there. Ozias Townsend came out there and made certain representations, and they formed a company. He came out again, and he had the stock books there at the office of Squire Roll, and I was passing there and he called me in and he said, "I wish to know if you are going to take some stock in this." I told him, "No, Townsend; I am too poor a man to take any stock at all. I have been doing what I could to favor this thing and to help it along, doing all that I could in my own way, but I am too poor to take stock in it." He said, "I have got $40,000 in cash in my own money to sink this shaft," and he also remarked, "My money is lying idle there in St. Louis, and I want a few of you here in Sandoval to take stock for the name of it." Says he, "I will tell you what I will do. If you will take even one share I will agree that you won't have to pay but $50.00." It was $100.00 a share. Well, I told him, "I have been doing what I could for this concern and that I would take one share with that understanding." The matter went along until Mr. Main here was elected one of the directors; he was the only one from Sandoval. They had a meeting and they assessed the stockholders 5 per cent., and all the Sandoval stockholders paid that 5 per cent. that had been assessed, every one of them. I paid my $5.00. Mr. Seymour was the contractor for the sinking of the shaft and Mr. Wellhoener down here, one of the St. Louis stockholders, paid something on his stock, but how much I don't recollect, whether it was 5 per cent. or not that he paid. All the money that the Sandoval stockholders paid and what Mr. Wellhoener paid went to pay off Mr. Seymour, I think. Within a few weeks or one month, I forget which, he commenced digging with shovels and dug probably 8 or 10 feet, and then they had a horse-power—had a horse and a windlass to hall the dirt up. The
237 next thing after that they levied, as I understood, or was about to levy an assessment of 30 per cent. upon the Sandoval stockholders and leaving themselves out entirely down here, and to this we objected strongly, and said that we were willing to pay our second assessment provided Mr. Townsend with his $40,000 would pay his, but we received no money to carry out that shaft whatever from any source only from Mr. Wellhoener and amongst ourselves; then we utterly refused to pay our second assessment until they paid up

theirs first, which I considered was right and proper, and they never did pay up; Mr. Townsend never paid the 5 per cent. on any of his assessments; the next that I recollect of Mr. Seymour threatened to bring suit against us there in town, for he was out of money and the hole was progressing; he had no money to pay himself or his hands, and he told us that he would bring suit against us if we did not keep him in money; we told him that we were perfectly willing to pay our second assessment, provided Mr. Townsend with his $40,000 stock paid up even his first assessment, in order to keep the thing going, but no money was paid but by Mr. Wellhoener that I know of; after that there was some correspondence going on; I was not a director, therefore I could not say what took place, but there was some correspondence going on with Mr. Townsend, and Mr. Main came down, and it strikes me that Mr. Townsend was to furnish and engine, and he came out and I recollect that I followed him up to the shaft where they were digging. I wanted to ask him certain questions, and among the first question I asked him was about the engine, and he made the reply that it would soon be out,

"in a few days," was his reply, to my best recollection. I
238 then wanted to ask him about why it was that he had not paid his assessment, and why he had got us into so much trouble, and he said that he had sold or was about to sell, I forget which it was, either he had sold or was about to sell $10,000 worth of stock in the Harrison wire works. I was going to ask him those questions and did ask him about the engine. I was pretty angry, and he made some excuse, says, "I will see you again, I am going over here;" there was a little farm adjoining the shaft, a little farm of 40 or 50 acres, the Ewing farm, a small farm lying adjoining the shaft; he then told me, "I am going over to see this old lady to try and buy this farm of her and I will see you again;" that was the last I saw of him; he never came back nor answered the questions that I wanted to ask him or anything of the kind. I found out then that the whole thing, in my judgment, was a fraud of the first water. I have no recollection of seeing him at our place more that 5 or 6 times, and I wanted him to come again for I wanted to have him arrested for obtaining money under false pretenses; that is what I intended to do and that is what I say now; that is what I wanted to do and what I fully intended to do.

Q. About those mining rights, who got them?

A. They were gotten up by Esquire Roll and Mr. Main and myself; Esq. Roll put in nearly all his time riding around the country among the farmers, and around there myself and Mr. Main, around town.

Q. What had Mr. Townsend to do in getting up the mining rights?

A. Nothing that I know of. I never knew that he had anything to do with it. I never saw him there riding around and he could not have done it for nobody there was acquainted with him; he took others that the farmers were acquainted with to get the royalty.

Q. What were Mr. Townsend's services and expenditures
239 incurred before the organization of the company worth to the company?

A. I don't know that he rendered any services. He was out there 5 or 6 times is all I know that he ever did. The charter, and so on, was paid there by the Sandoval parties; things of that kind. I never knew Mr. Townsend to pay anything. The land was purchased by Mr. Main and paid for by him—2 acres of land. I understand that he says he paid for it.

Q. Do you know about all that he did there?

A. I cannot tell of anything that he did only that he came out there 5 or 6 times and went up about the mines or here and there, dodging around. When I went with him to the mine and asked him about the engine he simply stooped over and hallooed to Mr. Seymour, "Hello, Seymour; how are you getting along down there?"

Q. That was after the organization of the company?

A. Yes, sir.

Q. I am inquiring before.

A. Before that I don't know anything that he did.

Q. Could he have done anything without you knowing it, in the way of getting up mining rights?

A. No, sir; he did not get up any of the mining rights; did not get them up and did not pay for the charter and did not pay for the land.

Q. What do you say his services were worth—that is, I mean before the organization of the company, before he was elected president?

A. I don't know as they were worth anything to my knowledge. He did nothing out there.

Q. Do you know what Mr. Townsend did after he was elected president of the company?

A. All that he ever did that I know of was coming out
240 there—the trips that he made. That is everything. After 1878 I never saw the man. In fact, it must have been earlier than that. I am confident that he could not have been there without my having seen him. If he had been there I would have known it. After 1878 I have no recollection of ever seeing him at all, and if he was there he was in disguise and I did not know it, for I did not see him after 1878.

Q. What pecuniary advantage to the St. Louis & Sandoval Coal & Mining Company were the services of Mr. Townsend as president and superintendent of the company?

A. Indeed, I could not answer that question. According to my opinion his services were worth absolutely nothing, only maybe his traveling expenses coming out there. For all I ever knew he was a detriment from the beginning to the end.

Q. Who paid D. Gratz Brown?

A. It was paid by the Sandoval men altogether. In fact, B. Gratz Brown brought suit on his bill, I think, for getting up the w-itings and one thing and another. It strikes me it was $200, but I may be mistaken. I think that was it. I think the costs of it was $30 or $40, and I had my share of that to pay and I paid lawyers' fees

and traveling expenses and one thing and another for more than my one share of $100, I believe.

Q. Do you owe the St. Louis & Sandoval Coal & Mining Company anything on your subscription?

A. No, sir; I do not profess to owe them anything at all; not a copper.

Q. Have you paid out more than you subscribed?

A. Yes, sir; I don't owe them anything.

Q. Do you know who paid Mr. Roll for taking the acknowledgments of the mining-rights deeds?

241 A. I do not, indeed; the house and lot where I live, I think it was taken before him. I don't know who paid him, but he was the one that got the certificate of that royalty.

Q. Did Mr. Roll have any stock in the company?

A. I think that he had or was promised some; promised some paid-up stock; whether he ever got it I don't know.

Q. The expense of getting up the organization, such as license, the certificates of incorporation, getting up the by-laws, recording of the deeds, and the certificate of incorporation, and, in short, all the expense of the organization of the company; how were they paid?

A. I believe the most of them, so far as I know——

Mr. CARR: Confine yourself to what you know.

A. About the recording I cannot state. I don't know who paid for that, but as regards the charter, and so on, the Sandoval men paid for it.

Mr. SCHAEFFER:

Q. Did you as one of the stockholders of the St. Louis & Sandoval Coal & Mining Company know anything about Mr. Townsend holding a large proportion of stock that he subscribed in trust for the company; of any arrangement made between the stockholders to that effect?

A. I never heard of it at all until*ce* I heard afterwards that he had 391 shares, I understood. The whole thing was based—the reason that I went into it and all of us there at Sandoval was on his representations that he had this $40,000 in cash and he did not care whether we furnished anything or not; that he could sink the shaft himself. It was under these representations that I took that one share, and the others, I know, so far as I am con-

242 cerned—we had a talk together about it and not a single man there had the means to sink the shaft, or all of us put together did not have the means, because it would cost too much money. It only went down something like 100 to 120 feet; something like that; I don't know how far. When Mr. Seymour stopped work the hole filled up with water and there was nothing on the lot but a kind of a shanty at that time. The men would come up with muddy clothes and strip off and keep their tools in there. Something had been done towards the boiler-house, but I could not say how far along it had progressed, but it appears to me not much had been done to it at that time. The hole filled up with water,

and when the new company took hold of it they went 609 feet before they reached coal.

Cross-examination by Mr. CARR:

Q. You stated in your examination-in-chief that you paid the assessment of 5 per cent. on your one share of stock?

A. Yes, sir.

Q. When did you pay that?

A. It was as soon as the assessment was made; somewhere, I think, in 1877.

Q. How did you pay it?

A. I think that I paid that over there to Mr. Main or some one there. I think I paid it in town there—in Sandoval. We all paid at one time.

Q. When the next assessment was made you say you refused to pay it?

A. Yes, sir; because they refused to pay down here the first assessment, Mr. Townsend with his $40,000.

Q. You mean the St. Louis stockholders?

243 A. Yes, sir.

Q. You never paid that assessment, did you?

A. No, sir; for the reason that I have already stated. We stood ready to pay it, all of us.

Q. In regard to getting up the mining rights. What had you to do with getting up the mining rights?

A. Mr. Main and myself were appointed on that committee to go through the town, and Esquire Roll worked all around for several days getting mining rights.

Q. When was that?

A. At the time after the company was about formed—seeing what we could get—what mining rights.

Q. Then the company was organized, was it?

A. I think so, to the best of my knowledge. I cannot tell, I was so little interested in the concern.

Q. You think it was after the company was organized that you and Mr. Main and Mr. Roll went around?

A. I cannot say positively whether it was before or afterwards we went around; so did Mr. Roll, and Mr. Roll got almost entire royalty of the whole concern.

Q. What business were you engaged in at that time?

A. I was agent for the Illinois Central railroad.

Q. In what capacity were you acting with that road?

A. As agent at Sandoval.

Q. Were you station agent?

A. I was.

Q. How did you have the time, then, to go out and solicit mining rights?

244 A. I had very little time; took what time I had between trains.

Q. That was very short, between trains, was it?

A. We were not only one day, but I think two days.

Q. The time was short between trains, was it?

A. No, sir; not very.

Q. How many trains ran on that road each way every day?

A. We started out some mornings after breakfast?

Q. How many trains ran on the Illinois Central railroad, how many south and how many north, each day?

A. Two each way.

Q. That made four?

A. Yes, sir.

Q. How many freight trains?

A. One very early in the morning and one at night.

Q. Only two trains?

A. That is all, except wild trains that had no business there.

Q. You had to be there for every train stopping there?

A. No, sir; not the wild trains.

Q. All the regular trains?

A. Yes, sir.

Q. That left you very little time to devote to outside business?

A. No, sir; I had plenty of time to do it. One train was in the morning and the other in the evening.

Q. Going one way?

A. Yes, sir.

Q. Then the other way?

A. One at night.

Q. When was the fourth one?

245 A. There was no fourth one. There were three passenger trains.

Q. Two passenger trains went north and two south the same day?

A. The ones I am speaking of now went south along in the afternoon and one at night, and in the morning there was one going north; one at night going north.

Q. There were two regular freight trains?

A. One at night and one very early in the morning—about breakfast time.

Q. You were always on hand when any of these trains passed the station, were you?

A. I was.

Q. How did it come that you and Mr. Roll and Mr. Main went out to solicit mining rights?

A. There was a meeting held and we were appointed.

Q. What kind of a meeting?

A. A meeting there amongst us, the Sandoval men, and Mr. Main and myself went to Samuel Ewing in reference to that two acres of land and argued with him for some time.

Q. You say you were out two days engaged in that business?

A. I think so; one or two days; parts of mornings; not all day, but between trains.

Q. In the meantime you attended to your trains when they were there?

A. Yes, sir.
Q. You did not travel around the country any about it?
A. No, sir.
Q. The mining rights extended out in the country some distance?
A. Yes, sir; and Esquire Roll got those.
Q. How do you know that?
246 A. He was on the committee and he came in and told me what he got.
Q. Do you know that of your own knowledge?
A. I do know it of my own knowledge.
Q. How do you know it?
A. By the parties that gave the royalty telling me that they gave it to Mr. Roll.
Q. Did you see the deeds by which the mining rights were conveyed?
A. I did not see all of the deeds; no, sir; but I know they were all on the record.
Q. How may deeds did you take?
A. I cannot tell now.
Q. How many did Esquire Roll take?
A. All around the whole country.
Q. How many deeds?
A. I could not tell you.
Q. When you secured a mining right you took a deed?
A. I suppose so.
Q. So you know that there was a deed taken?
A. Yes, sir; and they are on record.
Q. But you did not take any yourself?
A. No, sir.
Q. How was it with Mr. Main?
A. Mr. Main and myself went around town. I forgot who took the deeds. I went around and solicited parties to give their royalty is what I had to do. I went to several of the neighbors that owned little houses and lots and they agreed to do it, to give the royalty.
Q. Did Mr. Main take any deeds?
A. I could not say whether he did or not.
Q. Do you know of Esquire Roll taking any?
247 A. I know that he did.
Q. You know that he did?
A. I think that he did; I was not present in the office, but he was the main one that got them up.
Q. You know it from hearsay?
A. I know it from testimony of others.
Q. Is not that hearsay?
A. If one man tells me that he got it and the other says that he gave it, a man is very apt to think that good testimony.
Q. You did not see the deeds of these mining rights, did you?
A. I suppose maybe I have seen them some; I may have seen the one that I gave for my own.
Q. To whom did you give it?
A. To the old St. Louis & Sandoval Coal & Mining Company.

Q. Was it handed directly to the company?

A. I think so.

Q. The other deeds that you spoke of for mining rights, were they given directly to the St. Louis & Sandoval Coal & Mining Company?

A. I think they were.

Q. Are you sure of that?

A. I cannot state positively, but I suppose that is the way they were all given. I don't know how else they would be given. I know we got 700 acres all around there—got near the whole of it—got all the farms around there, and we knew about it; every stockholder there at Sandoval knew what we got.

Q. You are sure it was after the organization of that company?

A. I cannot say whether it was or not, but it was at or about that time.

248 Q. You are sure that the deeds for the mining rights were given to the company?

A. I suppose they were.

Q. You are not sure, then?

A. I did not see the writing, as a matter of course—did not see all the writings that Esquire Roll got, but I know that he got the royalty for all that land around there, amounting to 700 acres. I know that as a positive fact.

Q. Don't you know that Capt. Townsend was out there before the organization of the company and secured mining rights to a large amount of land?

A. No, sir; he never got an inch.

Q. How do you know that?

A. Because I was told so, and he was a stranger and nobody knew him and would not give them to a stranger.

Q. That is your opinion?

A. There is no proof earthly to prove that he got an inch; I know that he did not. Esquire Roll, I know, is the one that got them.

Q. Look at that signature and state whether that is your signature or not.

(Exhibit "E" to Ozias Townsend's deposition shown witness.)

A. Yes, sir; that is my signature, and "M. G. Nolan," that is my wife's.

Q. It is a deed of John Ellis and wife and a number of other persons, among whom is the name of your wife signed to it, conveying the right to mine coal *on* the land described in this deed to Ozias Townsend, in trust for the use of the St. Louis & Sandoval Coal & Mining Company, dated November 6th, 1877; do you recollect anything about signing that deed?

249 A. I may have signed it; I see my signature there, and, of course, I suppose I signed it, but we all understood that we were giving that royalty to the St. Louis & Sandoval Coal & Mining Company; I don't know that the writings were or how got up or anything of the kind; I do not know where or how got up

or anything of the kind, but I knew we were signing the royalty. That is my signature, and that is my wife's, I suppose, for the coal company.

Q. You see this deed is to Ozias Townsend? Look at it so you will know.

A. I suppose, as a matter of course, he being the president of the concern, it was made to him; they were all made to the St. Louis & Sandoval Coal & Mining Company is my understanding, but as to the writings I don't know anything about them. All I did was a little kind of outside work. It was my understanding that I was giving it to the company.

Q. You see you conveyed it to Ozias Townsend?

A. I am swearing the truth when I swear when I signed that paper I was giving it to the St. Louis & Sandoval Coal & Mining Company.

Q. The deed don't read that way.

A. I don't care how the deed reads.

Q. You are swearing against a solemn — that you gave?

A. It was my understanding that I was giving it to the St. Louis & Sandoval Coal & Mining Company.

Q. You know that Capt. Townsend being out there before the organization of the company taking mining rights?

A. He was there, to my best recollection, four, five, or six times; I cannot say positively; I never saw anything of him after Mr. Seymour gave it up and was going to sue him.

250 Q. I speak now when he was out there before the organization of the company.

A. All I recollect was about twice, I think—two or three times.

Q. He may have been there and you not to see him, may he not?

A. Certainly.

Q. You don't know of your own knowledge what efforts Mr. Townsend made in securing mining rights, do you?

A. Not to my knowledge; I never knew of his getting anything or any one else.

Q. How do you know about the citizens paying for the expense of getting the license and certificates of incorporation?

A. I am pretty positive that I gave something myself; that is for the charter, you mean.

Q. How do you know about the citizens paying for the expense of getting the license and certificate of incorporation?

A. I am pretty positive that I gave something myself; that is for the charter, you mean.

Q. How do you know about the citizens paying for the expense of getting the license and the certificate of incorporation?

A. I helped to pay for it myself, as others did.

Q. To whom did you pay the money, and how much?

A. I don't know, unless to Mr. Main; I don't know how much I paid in, but a pretty large amount for me, for I only had one share; but I paid something.

Q. What is your recollection as to how much you paid for that purpose?

A. I don't recollect; it may have been 50 cents or $5.00 or $1.00, for that matter; but I paid something.

251 Q. You did not pay anything to the secretary of the State; did not pay his fees?

A. No, sir.

Q. You did not pay the recorder for recording the articles of incorporation?

A. I don't know. I paid in something for the charter or whatever it was called and it went up, I believe. I don't know whether Mr. Main sent it out or who sent it, but we all paid something, to the best of my recollection.

Q. Did you ever pay anything except the $5.00 assessment? You paid $5.00 on your share of stock as your first assessment?

A. Yes, sir.

Q. Did you pay anything besides that?

A. Yes, sir.

Q. When and to whom did you pay it?

A. I think, as I have told you, I know that I paid it, but how much I cannot tell. I don't recollect, but I paid out more than that for other little expenses traveling backwards and forwards and one thing and another.

Q. That was no payment on your stock?

A. No, sir; and it is all they will ever get: they can bet on that.

Q. You say that the citizens paid Mr. Townsend's expenses when he was out there. How do you know that?

A. I did not say that the citizens paid his expenses out there.

Q. You did not?

A. No, sir.

Q. Who did you say paid his expenses?

252 A. I don't know that anybody paid his expenses.

Q. You say that nobody paid his expenses?

A. I don't know. I did not pay any of his expenses. If anybody paid it out there I don't know.

Q. You don't know after the organization of the company what services he rendered to the corporation, did you?

A. All I can tell you is when he was out there, and his services out there amounted to mighty little.

Q. Your office is some distance from where the shaft was about to be sunk—of where it was being sunk?

A. Not very far. I was always around when he was there.

Q. He may have been there and you not know it?

A. I think not. I would have been very apt to have heard of it.

Q. Do you know anything about his discharging the duties as president of the corporation after its organization?

A. I don't know at all, sir; only from hearsay.

Q. You were not in a position to know what services he rendered as president of the corporation?

A. No, sir.

Q. You were not a director?

A. No, sir; only what he performed out there, and that would not amount to anything.

Q. You were not a director, were you?

A. No, sir; not at all.

Q. You were only a holder of one share of stock?

A. That is all.

Q. In regard to the payment of B. Gratz Brown's fee for getting up the organization papers, you say that the citizens out there paid his fees?

253 A. Yes, sir; we were sued; sued in court at the cost of $30 or $40, and the debt besides.

Q. Were you sued individually?

A. I cannot state how that was, but I know that the coal company was sued; I was not sued individually, but owned one share of stock and had to help pay it.

Q. Was that after the company was put into the hands of George W. Herrod as receiver?

A. I cannot say whether it was before or after, for I had nothing to do with the financial affairs of the company.

Q. When suit was commenced by Francis H. Edwards & others against the St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois, you were one of the plaintiffs in that case, were you not?

A. I suppose I was, for I was a stockholder.

Q. Don't you know whether you were a plaintiff in that suit or not?

A. I suppose I was; of course my name was there, I think, along with the others.

Q. Who got you to go into that suit?

Q. What suit do you mean?

Q. The one I have just mentioned.

A. The one of B. Gratz Brown you mean?

Q. No, sir; don't you know whether you were a plaintiff in that suit or not?

A. I suppose I was.

Q. Who got you to join in that suit?

A. I don't know of any joining about it; it was the Sandoval men, of course, that commenced that suit, and, being as I was

254 one of them, my name was used also.

Q. Do you know when the suit was commenced?

A. I do't know; I cannot recollect; somewhere, I think, in 1878; the exact date I could not tell, for I never charged my mind with the dates of things like that.

Q. What I want to get at is what man or men induced you to join in that suit?

A. We had to act, as a matter of course, together; we were threatened to be sued by Mr. Seymour and the whole thing had played out, and we got no money from St. Louis only from Mr. Wellhoener; he paid some little, and Mr. Townsend with his $40,000 paid nothing at all, when he said he had the money lying here in

the bank and could sink it himself without any help, and we were looking to him.

Q. That is no answer to the question.

A. That is my answer.

Q. I will repeat the question: What I want to get at is what man or men induced you to join in that suit?

A. I said, as a matter of course, it was a kind of a joint concern so far as the Sandoval men were concerned; we had to do something in defense of ourselves because we received nothing here; that is the reason that the suit was commenced, of course.

Q. The question did not ask for that; the question is what man or men asked you to join in that suit?

A. I cannot state distinctly; it may have been all of us together.

Q. Was it Isaac Main that talked to you about it and induced you to join in that suit?

A. I cannot say that it was, sir, and more than Mr. Reinhardt, Mr. Rockwell, or Mr. Edwards; it was a joint affair in de-

255 fense of ourselves.

Q. How much money was paid Brown on his fee?

A. It strikes me the note was $200 and the costs between $30 and $40.

Q. When was this money paid to Mr. Brown?

A. I could not tell you the time. I think Mr. Main was the one that could tell that.

Q. This was some time after the suit was commenced?

A. As a matter of course, it was after the suit was commenced.

Q. Was it $100 only that was paid to him?

A. I think it was $200, sir.

Q. That is the whole fee—what he claimed?

A. I know his claim was $200.

Q. Had there been anything paid before that?

A. I don't know whether there had been or not; not to my knowledge; I cannot say anything about that.

Q. When you talk of having paid out more than the amount of your one share of stock, you paid that out to attorneys, did you, for prosecuting suits growing out of this corporation, the St. Louis & Sandoval Coal & Mining Company?

A. Yes, sir; it was done through Mr. Townsend's business, by the fraud that he practiced on us.

Q. You don't mean to say you paid this for assessment on the stock?

A. No, sir; I do not.

Q. There was a new corporation organized after this suit some time, called the Sandoval Coal & Mining Company?

A. Yes, sir.

Q. Did you go into that as a stockholder?

256 A. Yes, sir; I took one share again.

Q. The same as you had in the old company?

A. Yes, sir.

Q. Are you still a stockholder in that?

A. No, sir.

Q. All of the parties who were plaintiffs in that suit too- stock in that new corporation, did they not?

A. Some of them did, I beleive; I cannot tell who all. I know I took one share.

Q. Those that lived out there about Sandoval, in Marion county, Illinois, took stock in the new corporation, did they?

A. I think most of them took stock in the new one because it was gotten up by the right kind of men. Gen. Martin was the head of it, a man that we had confidence in.

Q. I am talking about the old stockholders out in Marion county going into the company.

A. Yes, sir; I beleive they did.

Q. How deep had the shaft to be sunk to get down to the vein of coal?

A. I think 609 feet, sir.

Q. Was that to the top or the bottom of the vein?

A. It strikes me that I had correct memorandums in my office. I cannot recollect exactly, but it was fully 600 feet before the coal was reached; that I know.

Q. About 603 feet of coal, was it?

A. It may have been something like that before they reached the coal.

Q. Did Mr. Seymour go on and complete the sinking of
257 the shaft down to the vein of coal?

A. Yes, sir.

Q. When was that after the suit we have been talking about was commenced?

A. I think the coal was struck in 1879, and I recollect it was only a month or two before the royalty ran out. They worked night and day, and I think it was either in the summer or the fall. I have distinct recollection to the time they struck the vein, as I had an old flag there that belonged to the company. It was an active place, and a man came running up and said that they had struck coal and they wanted the flag. We went and hoisted it. It was either in the summer or fall. I have the date of it in my office—all about it.

Q. It was before the two years from the time that the mining rights were granted that the shaft had been sunk down to the coal, was it, before the two years had expired?

A. I think so. I think it was a month or two to spare; a month, anyhow, to the best of my recollection.

Redirect examination by Mr. SCHAEFFER:

Q. By what company was the shaft sunk?

A. It was sunk by the Sandoval Coal & Mining Company. It was commenced with the depth of 110 or 115 or 120 feet, only it was full of water and it sunk down. There is something in my first examination that I wish to correct. My age was asked and I think I said 71 years and 2 months. I wish to correct it to 71 years and 1 month.

Q. This Mr. Roll, of which you spoke—is he living or dead?
258 A. He is dead, sir.

Signature waived by agreement of council.

The said CHARLES REINHARDT, being first duly sworn and cautioned by me, as special examiner, as a witness to the cause previous to the commencement of his examination to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between said plaintiff and defendants, so far as he should be interrogated, testified and deposed as follows:

Direct examination by Mr. SCHAEFFER:

Q. Please state your name, age, residence, and occupation.

A. My name is Charles Reinhardt; age, 60 years; residence, Sandoval, Marion county, Illinois, and by occupation I hold the office of treasurer of the Sandoval Coal & Mining Company.

Q. Were you a stockholder in the St. Louis & Sandoval Coal & Mining Company?

A. Yes, sir.

Q. The old company?

A. Yes, sir.

Q. When?

A. That is 10 years ago, and I cannot recollect the date. That is impossible. I think it was in 1877.

Q. You were one of the original subscribers to the stock in the old company?

A. Yes, sir.

Q. What amount of stock did you take?

A. I took $500 worth.

259 Q. Was Ozias Townsend, the plaintiff in this case, a stockholder in that company?

A. He claimed to have all the money——

Q. Was he a stockholder?

A. Yes, sir; he claimed to be, but I don't know whether he was or not.

Q. What number of shares or amount of stock did he subscribe?

A. I did not see him subscribe any, but he claimed, I think, that he—that he held $39,000 or $40,000 worth. I would like to state a little circumstance how I came to join.

Q. Will you please state in your own way—in a short way as you can—all that occurred there, how you came to subscribe stock, and all about it?

A. The plaintiff sent word out that he would like to meet the citizens of Sandoval some night—the way that I understood it. He came there to meet the citizens and the meeting was held in the school-house, and he made a little speech in which he said that if we would convey to him 500 acres royalty he would sink a coal shaft. He said that there was from $40,000 to $50,000 lying in St. Louis idle and everything was ready to go on with it. Those San-

doval citizens wanted a shaft sunk, and they went to work and got the royalty up; that is the history of the case. Then he got me to take some stock, and I took $500 worth. He said he thought it would not cost more than one-half; that he thought $25,000 would sink the shaft; that is all I can state of the history.

Q. Who got up the royalty?

A. The royalty was gotten up by several of the citizens, but I did not do anything in the royalty.

Q. How much land did you give royalty in?

260 A. 5 or 6 lots; I think maybe 7 or 8 lots; that is so long ago that I don't recollect.

Q. Was there much trouble in getting the mining rights there?

A. No, sir; not at that time.

Q. The citizens donated the mining rights in order to get the coal shaft sunk there?

A. Yes, sir; they did. They wanted the coal shaft.

Q. Do you know who did the work in getting up the mining rights?

A. Yes, sir; Mr. Nolan and Mr. Main and Mr. Roll, and there may be some others. I did not take any hand in it; we all helped.

Q. Do you know what amount of time or services Mr. Townsend, the plaintiff, put in before the organization of the company before it was finally organized?

A. To my best recollection he may have been out there once or twice—that is, before it was organized.

Q. What were his services worth to the company that he performed before the organization of the company?

A. It was not worth anything. He only tried to make something, and he went to Sandoval afterwards.

Q. Do you know anything about his services after he was elected president of the company?

A. No, sir; I don't know of any, because I was not a director, and when we found out that he was worthless I never paid any more attention to it. He was out there, maybe, 3 or 4 times afterwards; but when I found out that he was worthless I did not bother my mind about him, and I never saw the man until he commenced suing the new company after we had coal.

Q. Were you one of the plaintiffs in the case of Francis

261 H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois?

A. I don't think I was, but I was a witness.

Q. Were you one of the plaintiffs also?

A. Yes, sir; I believe I was.

Q. Can you tell how that suit was brought about, who urged it on, who was the instigating party in it?

A. The Sandoval stockholders; we were bound for the debt that was accrued; the hole was down 116 or 118 feet, and we were insolvent and could not pay only the first assessment, and the contract was to pay monthly, on the first of the month, the man who sunk the hole—that is, Mr. Seymour. The stock was assessed 5

per cent. On our stock in Sandoval the assessment amounted to about $3,000, I think; I cannot recollect exactly. Mr. Wellhoener had $5,000, and Mr. Wellhoener, I think, was treasurer at that time for the St. Louis Company, and he came out there and that was paid, but not from the plaintiff or any of the other St. Louis stockholders; they did not pay a cent, only the Sandoval stockholders and Mr. Wellhoener.

Q. And then you instituted a suit in order to save yourselves?

A. Of course, to save ourselves.

Q. And wind up the old company?

A. Yes, sir; because there was not any company any more.

Q. Are you a stockholder in the Sandoval Coal & Mining Company—the new company?

A. Yes, sir.

Q. Are you a director in it?

A. Yes, sir.

Q. And treasurer?

262 A. Yes, sir.

Q. When that company was organized from whom did you purchase the land upon which the shaft was made?

A. From Mr. Main.

Q. How much did you pay for the 2 acres of land and improvements that belonged to it?

A. We just bought it for the indebtedness; that was $2,400 and some odd dollars; I cannot state positively the cents.

Q. What was that land—the 2 acres of land with everything connected with it—reasonable worth at that time?

A. It was not worth $100, because the land was not that high, and there were no improvements, and there was an indebtedness on it; it was a hole full of water.

Q. Why did your company agree to pay $2,400 for that property when it was not worth that amount?

A. We wanted to sink the shaft down and see if we could find coal.

Q. Did your company know at that time of any claim that Mr. Townsend had for his services?

A. No, sir; there was not anything at all; we never had any notice of it, and I did not know that we had a president at St. Louis.

Q. When did you first learn anything in reference to that, that Mr. Townsend had a claim against that property or against the new company as the owner of the property?

A. After we found coal.

Q. When did you first learn that he had a claim against the property—a claim against the old company?

A. He sued us in court there; that is the first time I ever knew of it.

263 Q. Do you, as a stockholder of the old company, the St. Louis & Sandoval Coal & Mining Company, owe the old company anything?

A. No, sir; not a cent.

Q. Do you owe Mr. Townsend, the plaintiff, anything as a co-stockholder in that company?

A. No, sir.

Q. If the Sandoval Coal & Mining Company had known that Mr. Townsend had a valid claim against that property would it have bought the property from Mr. Main and have gone on and expended the necessary amount to sink the shaft?

Objected to by plaintiff's council as incompetent and irrelevant, as the witness does not know what the company would have done had it known of Mr. Townsend's claim as a creditor.

A. No, sir.

Q. Who paid Samuel Ewing for that land?

A. I did not see who did it. I understood that it was Mr. Main. I don't know who paid it.

Q. Do you know whether or not the Sandoval Coal & Mining Company did pay for it?

A. Yes, sir; the Sandoval Coal & Mining Company paid for it.

Q. When was that?

A. That was when we bought it and went on to sink the shaft.

Q. Do you remember how you paid for it—to whom you paid the money?

A. I cannot tell who we paid it to.

Q. Was it ever agreed, so far as you know, between Mr. Townsend and the stockholders of the St. Louis & Sandoval Coal & Mining Company that Mr. Townsend should hold a part of his stock as subscribed by him in trust for the company, to be sold by him
264 and the proceeds of the sale placed in the treasury of the company, or anything of that kind or nature?

A. No, sir.

Q. Did you testify in the case of Francis H. Edwards & others against the St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois?

A. I did.

Q. Did you in your testimony refer to the same transactions to which you have referred in this examination?

A. Yes, sir.

Cross-examination by Mr. CARR:

Q. You were a stockholder in the St. Louis & Sandoval Coal & Mining Company to the extent of 5 shares, I believe?

A. Yes, sir.

Q. Upon which you paid a call of 5 per cent. and no more?

A. No more.

Q. Did you sign a deed for the mining right which you have testified?

A. I did sign it in trust for the plaintiff to sign it over to the company.

Q. When was it that you signed that deed?

A. It was 10 years ago. I think it was in 1877 or in the com-

mencement of 1878. I could not say exactly. I could not swear either way. You have the papers and the deeds there. Of course, that I cannot recollect.

265 Q. Is that your genuine signature (Exhibit "E" to Ozias Townsend's deposition here shown to witness)?

A. Yes, sir; I cannot deny it.

Q. That is your wife's name, is it?

A. Yes, sir.

Q. What is her name?

A. Frederica Reinhardt.

Q. This deed is dated November 6th, 1877, and is given by Joshua Ellis and wife and many others with the witnesses' name signed to it as one of the grantors in the deed to Ozias Townsend in trust for the use and benefit of the St. Louis & Sandoval Coal & Mining Company, not then organized. Do you know of Capt. Townsend having spent considerable time out there interviewing persons who owned the land in and around Sandoval in trying to secure the mining rights in this deed?

A. No, sir.

Q. What business were you engaged in then?

A. I was engaged in the rest-raunt and bakery business at Sandoval.

Q. You did not go around, then, with Capt. Townsend in trying to secure the mining rights?

A. No, sir.

Q. Do you know who did go around with him?

A. No, sir.

Q. You know that he secured some mining rights, do you?

A. No, sir.

Q. Does not that deed show it?

A. That was handed me then and I signed it; it was not Mr. Townsend.

Q. You acknowledged it?

A. Of course.

266 Q. Do you remember before when you acknowledged this deed?

A. I could not say now whether it was Mr. Schagland or Mr. Ellis; it is so long ago that I could not swear positively.

Q. Do you know of anybody else trying to get up mining rights?

A. Yes, sir; I know Mr. Nolan and Mr. Main did. I saw them going around soliciting mining rights, and they came to me, I think.

Q. Were they with Capt. Townsend when they were soliciting?

A. No, sir; I did not see them with him.

Q. The citizens out there were in favor of having a coal mine developed there, were they not?

A. Yes, sir.

Q. And they were willing to grant the right to mine all the coal under their land if the shaft was sunk and the mine was put in operation?

A. Yes, sir; if it was put in operation within 2 years; otherwise they would fall back.

Q. You saw Capt Townsend out there, did you, about that time?

A. I heard him speak of that meeting, and heard all the promises he made.

Q. What meeting was that?

A. When he came out there to meet the citizens of Sandoval, that was in the school-house there.

Q. What time of the year was that?

A. That must have been a little before the time that the royalty was solicited. I could not tell you the months or days.

Q. You met him in the summer before?

A. No, sir.

Q. Did he not commence in July working the thing up?

267 A. I could not swear to that.

Q. Have you seen a copy of the report of the State geologist about the coal in that section of the country at that time?

A. No, sir.

Q. Did Capt. Townsend talk about it?

A. If he had spoken about it I would not have believed it.

Q. Why would you not?

A. I would not believe any such a man.

Q. You would not believe him now? You believed him then, did you?

A. I had my doubts then.

Q. You did not believe him then?

A. Of course, if he got the coal mine I would fall in.

Q. Look at that report and see if you heard that talked about frequently out there. (Copy of Dr. Norwood's Report of the Geological Survey of Illinois, published in 1858 by order of the governor of the State of Illinois, shown witness.)

A. No, sir; I do not.

Q. It was not talked about at the meeting that you speak of?

A. All we went by was Centralia. They sunk a shaft there, and that was 6 miles from us.

Q. And the coal was 6 feet deep at Centralia. Was that the way it was talked about?

A. That is what they say.

Q. The coal was 6 feet deep at Centralia?

A. Yes, sir.

Q. That vein is 6 miles south of Sandoval, is it?

A. Yes, sir.

Q. And you believed that there would be a 6-foot vein at

268 Sandoval if a coal shaft was sunk down?

A. That is a thing that I could not swear to.

Q. You know it now, but at that time you believed that if you sunk a shaft down at Sandoval you would strike a 6-foot vein of coal?

A. Yes, sir.

Q. That induced you to subscribe for the stock?

A. He promised to have the money lying there.

Q. Not on account of his promise, but on account of the coal vein that had been discovered at Centralia?

A. If Centralia had not sunk a shaft Sandoval might not have thought of it at that time; maybe later.

Q. You beleived that 6 feet of coal was underlying the surface at Sandoval because on boring at Centralia it was ascertained that there was a 6-foot vein in there at that time?

A. I may have, but still at Carlisle—down there they sunk a shaft and they did not find coal. I may have beleived it, and yet it might not have been there.

Q. You had every reason to beleive that you would strike a good vein of coal if you sunk a shaft at Sandoval?

A. No, sir; I did not have any reason to beleive it.

Q. You had some reason to beleive that you would strike a 6-foot vein of coal?

A. Some reason; yes, sir.

Q. And, acting on that beleif, you subscribed to 5 shares of stock?

A. Yes, sir; we wanted to try it; to get a coal shaft.

Q. In addition that you gave the right to mine coal off your land?

A. Yes, sir; if they found it inside of 2 years.

Q. That right you gave before the company was organized.

269 Do you remember when the company was organized?

A. No, sir.

Q. December 12th, 1877?

A. I know it was in 1877, but I could not give the months nor days.

Q. The certificate of organization says that?

A. Well, of course.

Q. Do you remember when the suit of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois, was commenced?

A. No, sir.

Q. The record says it was commenced the 27th of June, 1878.

A. I guess that must be right, then.

Q. What man or men talked to you and induced you to join in that suit as a plaintiff?

A. We all got our heads together and we could not help ourselves; the stockholders of the St. Louis & Sandoval Coal & Mining Company—there was no extra talking, we had to do it; did not see any way out of it.

Q. That is no answer to my question; my question is, what man or men talked to you and induced you to join in that suit as a plaintiff?

A. Mr. Main was our director for a month or so.

Q. Was he the one that got you into the suit?

A. He called a meeting of the stockholders and we had to do it.

Q. You went into that suit as a plaintiff, did you?

A. Of course.

Q. You were at that time a stockholder and treasurer in the new

corporation, to wit, the Sandoval Coal & Mining Company, as I understand you?

270 A. Yes, sir.

Q. How many shares of stock did you have in it?

A. I took 5 when they commenced sinking the shaft.

Q. And still have that number of shares?

A. I have got a few more.

Q. How many shares have you got now?

A. $2,100; just multiply that by four and that makes 84 shares, is it? We have it at $25.00 a share in the new company.

Q. Did the plaintiffs in that suit take the same number of shares in the new company as they had in the old company?

A. I could not tell that; there was so many taken.

Q. Did Isaac Main take 10 shares in the new company?

A. I think he did.

Q. You say that the shares were $25.00 only; they were $100.00 in the old company. That would be 40 shares, then?

A. Yes, sir.

Q. Was that the number he took in the new company?

A. I think so.

Q. Lambert Nolan took four shares on the new company, did he?

A. I don't know.

Q. Jacob Litchy took 8 shares, did he, in the new company?

A. I think he did. I would not swear to those shares, anyhow. I would only swear to my own.

Q. Did Jacob Litchey take any shares in the new company?

A. I think he did.

Q. Did he take stock to the same amount that he had in the old company?

A. I don't know.

271 Q. C. N. Rockwell, did he take shares in the new company?

A. I think so.

Q. He had three shares of the old stock?

A. Yes, sir.

Q. Mr. Roll had three shares in the old company. Did he take shares in the new company?

A. No, sir.

Q. Francis H. Edwards had 5 shares in the old company. How many did he take in the new one?

A. I think he took 5 in the start; I don't know how many he has got now.

Q. When did you become a director in the new company?

A. You have got me again; I think 4, 5, or 6 years ago.

Q. Who were directors in the new company at its organization?

A. I was one, Mr. Wellhoener was another, and Mr. Rockwell and Mr. Main; I don't recollect them all; and Mr. John Savin was another.

Q. You are still a director, I believe?

A. Yes, sir.

Q. And have been a director all the time?

A. Yes, sir.

Q. How long have you been treasurer in the new corporation?

A. 5, 6, or 7 years; I don't exactly know.

Q. You were not treasurer at the organization?

A. No, sir; Mr. Marshall, of Salem, was treasurer.

Q. How deep was the shaft sunk until it struck the vein of coal?

A. It was 603 feet. You say to the vein of coal or is it to the bottom you mean?

Q. To the vein, I asked you.

272 A. That is right; 603 feet we call it; 609 feet to the bottom of the vein and 6 foot of coal.

Q. It is a 6-foot vein of coal?

A. That is what we call it, but it is not quite that much.

Q. What time was the shaft sunk down to the vein?

A. I could not tell; I think it was either in September or October when we struck coal; it was a little before our royalty would fall through, in 1879.

Q. Your deed is dated November 6th, 1877, and you had 2 years from that date?

A. Yes, sir; that is right.

Q. Then it was before the 2 years had expired that you struck that vein?

A. Yes, sir; maybe 2 or 3 weeks before the 2 years would have been out.

Q. How did you come to organize this new corporation?

A. We wanted a coal shaft.

Q. Do you remember the date of organizing it?

A. No, sir; I could not.

Q. How soon after the suit was commenced—I mean the Edwards suit?

A. I could not give you any idea; I don't recollect.

Q. Was it three or four months afterwards?

A. I could not recollect, it is so long ago.

Q. What is your best recollection on that point?

A. When we commenced?

Q. When you organized the new company?

A. That was after the suit commenced.

Q. How soon after, I asked you; 2, 3, or 4 months?

273 A. It may have been 5, 6, or 7 months; I cannot swear to any correct time; I could not.

Q. You know of Capt. Townsend being out there soliciting and securing mining rights, do you?

A. Not soliciting. I know that he was out there 5 or 6 times, and then I never saw him any more, and it was a good thing that he did not come out.

Q. You saw him out there 5 or 6 times?

A. Yes, sir.

Q. How many times was he out there before the old corporation was organized?

A. That is all the times that I know anything about.

Q. Every time you saw him out there was before the organization of the old corporation, was it?

A. Of course he tried to organize there, and he was out there, say 4, 5, or 6 times, that I had any knowledge of.

Q. Before the organization, you mean?

A. I think it was.

Q. What was he doing when he was out there?

A. I did not go around with him.

Q. You did not see, then?

A. No, sir.

Q. You don't know what he was doing when he was out there so many times?

A. Only what I heard; I did not see him doing anything.

Q. As I understand, you were present at the sale of George W. Herrod, as receiver, of the 2 acres of ground on which the shaft was sunk?

A. I think I was near by, but I did not bid on it.

Q. Where was the sale, in Salem or Sandoval?

274 A. Right at the water hole.

Q. Where the shaft was sunk?

A. Yes, sir.

Q. You were around there at the time of the sale?

A. I think I was.

Q. You think that the parties that you have named as taking stock in the new corporation were all present at the time of the sale?

A. I could not tell you.

Q. Do you remember how many bids were made at that time?

A. No, sir; I did not bid on it and I don't know how many bids were made.

Q. Do you know of anybody else bidding?

A. If I should tell you I heard so, that would not be evidence, would it?

Q. I thought you said you heard it was knocked down for $200.00?

A. I did not hear it knocked down.

Q. You say that the new corporation paid something over $2,400.00 debts of the old corporation?

A. Yes, sir.

Q. All the debts that you know anything about, except Capt. Townsend's, did you?

A. We did not owe anything to him.

Q. The directors of the old corporation had audited and allowed his claim for $10,000 for the services rendered the old corporation prior to its organization. Did you know about that?

A. No, sir.

Q. You did not know about that?

A. No, sir; we did not know anything about that; what

275 they did was done in St. Louis, and I did not know anything about that.

Q. You did not belong to the old board of directors?

A. No, sir.

Q. Did you not know that he had a claim of $10,000 for services rendered prior to the organization of the old corporation?

A. No, sir.

Q. You were plaintiff in the suit against them, were you not?

A. I was plaintiff to pay the debts that were on the hole at that time.

Q. You were plaintiff in that suit?

A. If you claim in that suit.

Q. Was that suit brought to declare the $10,000 stock issued to him in payment of that allowance, to declare it void?

A. To call it void and call it bankrupt.

Q. Was that the purpose of that suit?

A. The suit was about the debts that were on that hole where the shaft was sunk; we did not say anything about Mr. Townsend or anybody else.

Q. You say you did not know anything about the directors of the old corporation allowing him $10,000 for his services prior to the organization of the old company?

A. No, sir.

Q. Did you ever hear of that?

A. Lately; a few days ago when Mr. Schaeffer wrote out the bill he brought in here; that is the first that I ever heard anything about it.

Q. Did you testify as a witness in the other case, I mean in the case we are talking about, the Edwards case?

A. Of course I did.

276 Q. And you say that you never heard about the $10,000 claim?

A. No, sir; never heard anything about it.

Q. Did you attend that trial?

A. No, sir.

Q. Where did you give your deposition, your testimony?

A. In Mr. Schaeffer's office there.

Q. Before whom?

A. Before Mr. Bryan, a master in chancery.

Q. You testified before him?

A. Yes, sir.

Q. In that case?

A. Yes, sir.

Q. And never heard anything about the $10,000 claim?

A. No, sir; I did not.

Q. In your examination-in-chief you said that you first heard of his claim after you had found coal?

A. No, sir; he sued the new company after we found coal for the shaft, not about his $10,000.

Q. When did he sue the new company?

A. I could not give you the date; 7 or 8 years ago.

Q. Where did he sue it?

A. In the Marion county court first.

Q. Don't you know that under the resolutions of the board of di-

rectors of the old company, passed on the 20th day of December, in the city of St. Louis, that they fixed the salary of the president and *ex officio* superintendent of the St. Louis & Sandoval Coal & Mining Company at $150.00 a month?

A. No, sir.

277 Q. Don't you know that he was to be paid for his services as president and *ex officio* superintendent?

A. I don't know.

Q. Did you ever hear that he was to be paid a salary after the company was organized?

A. I heard it, but that is no evidence.

Q. You know that he acted as president and *ex officio* superintendent?

A. No, sir; I never was at any of their meetings; he might have been scribe or treasurer or anything; I don't know anything about it.

Q. You knew that he was president, did you?

A. Only hearsay.

Q. Then, you heard that from the directors, did you?

A. Yes, sir; from Mr. Main, of course.

Q. Did you expect him to serve as president and *ex officio* superintendent for nothing?

A. That was his business; I did not care.

Q. Did you expect him to serve as president and *ex officio* superintendent for nothing?

A. No, sir.

Q. You knew he acted as president and *ex officio* superintendent for a considerable time after the organization of the old corporation, do you?

A. I don't know that he acted ever.

Q. Look at this exhibit (Exhibit "A" to the deposition of John B. Mears here shown the witness).

A. He might have promised to pay it, but I guess he did not.

Q. This deed from Samuel Ewing and wife recites that he

278 was paid $200.00 on the 9th day of January, 1878, for the 2 acres of ground upon which the shaft was sunk. Do you know who paid that?

A. No, sir.

Q. You never paid but the first assessment of 5 per cent. on your stock in the old company, did you?

A. That is all.

Q. You testified in your examination-in-chief in regard to the value of the 2 acres of land upon which the shaft was sunk. Do you know what number of acres the mining rights cover?

A. No, sir.

Q. Since the shaft was sunk down to a paying vein of coal, those mining rights became very valuable to the company, did they?

A. I think they did.

Q. This mine has a 6-foot vein of coal in it, I understand you?

A. About that—5½ or 6 feet; we call it 6 feet.

Q. Do you know the number of tons of coal a 6-foot vein will produce to the acre?

A. No, sir.

Q. Coal lands at that time out in that part of the State were worth $30.00 an acre, were they not?

A. I could not tell you; I did not deal in any.

Q. You don't know what they sold for?

A. No, sir; I did not hear of anybody selling.

Q. Do you know what Mr. Main bid in the property for at the receiver's sale?

A. I heard, but that would not be evidence, would it? I heard $200.00.

Q. Was there any agreement among the old stockholders living in Marion county, Illinois, authorizing Isaac Main to buy in
279 this property at the receiver's sale and then sell it to the new corporation for enough to pay the debts of the old corporation, so as to save the stockholders?

A. Yes, sir.

Q. There was such an agreement?

A. Yes, sir; but it was not at the time it was sold; afterwards it was agreed to sell it to the new company.

Q. That is, to sell it to the new corporation for enough to pay the debts of the old corporation, excluding the plaintiff's debt claimed?

A. I don't know anything about that. He never claimed any until 10 years afterwards.

Q. That is, you say you never heard of the claim until 10 years afterwards?

A. No, sir; that is a new thing to me. Of course I did not hear of it.

Q. What amount of money had been expended by the old company in sinking the shaft down 114 feet and the other improvements that were put on the 2 acres of ground when the work was stopped? How much *ahd* the old company paid?

A. We paid the first assessment; that was 5 per cent. on the stock we had there. I don't know how much we had, but we had about $3,000; around that.

Q. Then you had to pay about $3,000 for the sinking of the shaft so far as it was sunk, did you?

A. That was the assessment, 5 per cent. on the $2,700, $2,800, or $3,000. I could not swear to the full amount. Of course Mr. Wellhoener came into it, and he paid for $5,000 worth of stock. I think that was spent there, too.

Q. How much had he paid?

280 A. I don't know. I was not treasurer at that time.

Q. As soon as the new corporation sunk down to the vein of coal did it commence mining coal right away?

A. Of course we took out some coal.

Q. And have been taking out coal ever since?

A. Yes, sir; whenever we had a c*l*l for it.

Q. You have kept the mine running ever since, have you?

A. As much as we could; sometimes it stands idle when we have no call for it.

Q. Have you taken out much coal?

A. I could not tell you how much.

Q. Are you treasurer of the company?

A. Yes, sir.

Q. Do you keep track of how much coal is taken out?

A. Do you think I could have all that in my head for 10 years, what coal had been taken out? We have taken out a good deal, but I could not tell you how much.

Q. How many tons a month or a year?

A. I could not tell you. I don't keep any books.

Q. Do you think you have taken out 6,000 tons a year?

A. I don't think anything about it.

Q. What is your recollection?

A. I have never put my mind on it, how much we have taken out, but we have taken out a good deal. I could not swear to the amount. I could not swear as to how many tons of coal we have taken out.

Q. Can you approximate the amount?

A. No, sir.

Q. Do you think you have taken out as much as 6,000 tons a year?

281 A. No, sir; I could not make up my mind now.

Q. You are the treasurer and keep the books?

A. Yes, sir; I pay off every two weeks.

Q. Can you tell about how many men you work?

A. Off and on I might, but not correctly. In the summer time we may work 40 or 50 hands and in the winter time we might work double that number or not so many; right now we have not so many, because coal is slow sale.

Q. In the summer you work 40 or 50 hands and in winter a hundred or upwards?

A. Up and down, I don't think we have over a hundred yet.

Q. That has been the case ever since you got down to the vein?

A. No, sir; not at the start; we did not have any rock-work then. I could not tell; it is impossible to tell how many men we have every month; I could not do it.

Q. Do you think it would average the number you have specified?

A. It might and it might not.

Q. Have you extended your mining operations beyond the 2 acres of ground?

A. Yes, sir.

Q. Much beyond?

A. Yes, sir.

Q. You are utilizing the mining rights fully that were secured for the old corporation?

A. Of course, the- belong to the new mining company now. We are on that land, of course.

Q. You are using it?

A. Yes, sir.

282 Q. In your examination-in-chief you said that on the trial of the Edwards case you had testified in regard to the same transactions as you have now testified. Did you in your testimony say anything in regard to the allowance of $10,000 by the board of directors of the old corporation to the plaintiff for his services rendered prior to its organization, to wit, his services in organizing the corporation and also in securing the mining rights?

A. I don't think I did.

Q. You did not?

A. No, sir.

Q. Did you in your testimony in the Edwards case testify anything in regard to the payment of the salary which was to be paid to the plaintiff for his services as president and *ex officio* superintendend of the old corporation?

A. Not that I recollect.

Q. Do you remember the facts to which you did testify on the trial of the Edwards case?

A. I think I might not have it word for word. I could not recollect that, but still I think that I testified as near to that as I could, because I never knew anything about the president's salary; never did.

Q. And you did not testify anything in regard to the $10,000 allowand by the board of directors?

A. No, sir; never heard anything about it.

Redirect examination by Mr. SCHAEFFER:

283 Q. Is the Sandoval Coal & Mining Company now operating on the mining rights conveyed to the company by Mr. Main, or has it received other mining rights then on which it has been for years operating the mine?

Objected to by the plaintiff's counsel on the ground that it seeks to elicit facts that are incompetent and irrelevant to any issue in the present case.

A. We could not work of 2 acres; of course, we bought royalty—lots of them besides that were given—and have to buy some yet.

Q. Did you since then secure mining rights—that is, since your purchase from Mr. Main—secur*ing* mining rights from the owners of the land upon which you are operating the mine?

Objected to by plaintiff's counsel on the ground that the answer sought to be elicited is incompetent and irrelevant in any issue in this case.

A. Yes, sir; lots of them.

Q. Have you been for the last 5 or 6 years operating your mine on mining rights that you secured from other persons than Mr. Main; and, if so, to what extent?

Objected to by plaintiff's counsel on the same grounds as the last above stated.

A. We have, but to what extent I could not tell.

Q. Did you or did you not, in the suit of ejectment brought by the St. Louis & Sandoval Coal & Mining Company against the Sandoval Coal & Mining Company, secure the mining rights to the Sandoval Coal & Mining Company from all or nearly all the parties that had previously conveyed their mining rights to the St. Louis & Sandoval Coal & Mining Company?

Objected to by plaintiff's councel on the ground that it
284 seeks to elicit evidence that is incompetent and irrelevant to any issue to this case.

A. Yes, sir.

Signature waived by agreement of councel.
Recess was here taken until 2 o'clock p. m.

After Recess.

The said JAMES S. MARTIN, being first duly sworn and cautioned by me as special examiner as a witness to the said cause previous to the commencement of his examination to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said plaintiff and defendants, so far as he should be interrogated, testified and deposed as follows:

Direct examination by Mr. SCHAEFFER:

Q. Please state your name, age, residence, and occupation.

A. My name is James S. Martin; age, 62; residence, Salem, Illinois. I have several occupations; I think I had better take that of a farmer—farmer and banker.

Q. What relation, if any, do you occupy to the Sandoval Coal & Mining Company, and how long have you held such relation?

A. I am president of the Sandoval Coal & Mining Company and have been since its organization, with probably a year off, I guess; about.

Q. Will you state when the organization was organized
285 and how you came to take stock in the company?

A. The company was organized some time in 1878, I think, if my recollection serves me right; probably in the latter part of 1878, and I took stock in the new company first at the solicitation of the Sandoval people. I own some property at Sandoval and in the neighborhood of Sandoval, and they came to me and asked me to take some stock with them. We organized the new company after the old one had been dissolved, and we met to help them out, and I took $500.00 worth of stock.

Q. After the organization of the company from whom did you buy the land upon which the shaft was afterwards sunk?

A. We bought it of Mr. Main.

Mr. CARR: Will you admit that it was duly organized under the laws of the State of Illinois?

Mr. SCHAEFFER: Yes, sir.

Q. Will you state what the consideration was upon which you purchased that property from Isaac Main in the first place?

A. The understanding that we had with Mr. Main in the purchase was that we were to pay the old indebt-ness of the company, which was specified to us, and we were to pay for the 2 acres of ground $100, which we did to Mr. Main, and the man that was sinking the shaft—Mr. Seymour—his claim amounted to something like $1,400.00, and then Litchey and Steiner had a claim of probably $150.00 or more—I don't recollect exactly—for some lumber they had furnished up there, and Nodine, or some such name as that, had a claim for work he had done in building something about there, some temporary works there. We finally paid altogether about $2,400.00; something like that is my recollection.

286 Q. What was the condition of the property at that time?

A. The property at the time we took possession of it was in a very bad condition. There was a shaft sunk there or a hole in the ground about 120 feet, probably, or something like that—I could not state that definately, as I have not got those things in my mind; 125 or 130 feet or somewhere along there—and that hole was full of water. They had some kind of temporary hoisting apparatus there, some kind of temporary head frame, with a small engine-house, but no engine or anything of that kind; that was all there was of it then. They had just commenced their work and got down about that far.

Q. What was it then worth; its actual cash value?

A. If you want the actual worth of it, it was not worth very much. My recollection is that the 2 acres of land had probably been bought, I think, for $200.00; it was not worth much, of course; no land around Sandoval was worth that or anything near it; $50.00 an acre would have been a very high price for it. I am giving you my judgment. $50.00 an acre for the 2 acres would have been a very high price, and this temporary work, of course, was worth something for the use of the men that were contracted with, and that was about all that it was worth.

Q. These claims amounted, as you say, to the aggregate of $2,400.00?

A. Yes, sir; something like that; probably a little over that.

Q. All that were presented to you at the time as being the debts of the old company?

A. Yes, sir; all that we heard of. We were very particular about that, to know what the claims were.

287 Q. Those you paid?

A. Yes, sir.

Q. Do you remember about paying for the land—$200.00 for the Ewing land?

A. Yes, sir; I did not make the payment, of course, myself; the treasurer made the payment, but that was paid. I might say that that was within my knowledge. I did not deliver the money to Mr. Main, but I was president of the company, and it is a fact within my knowledge that the money was paid and that these claims were paid; and I have qualified my answer by saying that I probably

did not see the money paid to Mr. Main or to Mr. Seymour or anything of that kind, but that is the fact about it.

Q. Those were debts that your company assumed to pay, and you know that your company ordered them paid?

A. Oh, yes, sir; they were paid; that is the truth of the matter.

Q. And the directors were satisfied with your action?

A. Yes, sir.

Q. Did you or your company at that time know anything of any claim that the plaintiff, Ozias Townsend, then had against said property or against the St. Louis & Sandoval Coal & Mining Company?

A. No, sir; we knew nothing about any claim that he had; did not think of his having any or anybody else; did not know anything about it.

Q. Would the Sandoval Coal & Mining Company have taken or bought that property if they had known there was such a claim by Mr. Townsend against it?

Objected to by plaintiff's council on the ground that the question seeks to elicit facts that are incompetent and irrelevant to any issue in this case.

288 A. I could probably better answer that for myself. I would not have gone into it had I known there was any outside claim—outside of these hanging over the mine to any extent, and I don't believe my company would have. I cannot state what they might have done, but I can state for myself what I know.

Q. When did you first learn that the plaintiff, Ozias Townsend, pretended to have any such claim against the company?

A. After the time of the commencement of this suit that you are litigating now is the first I ever knew of his having any claim or pretending to have. I know that he was contending that the mine was his. We were going through a long lawsuit about it, but about his claiming any amount of money I know nothing about it; of course I had no transactions with Mr. Townsend about the old part of it at all.

Q. Did you or the Sandoval Coal & Mining Company ever promise or agree to pay Mr. Townsend anything for any purpose whatever?

A. No, sir.

Q. How many and who of the old stockholders of the St. Louis & Sandoval Coal & Mining Company are stockholders in the Sandoval Coal & Mining Company, and what amount and proportion of the stock did they hold?

A. I believe there is only one at the present time that I know of, Mr. Reinhardt. The widow of Dr. Edwards is a stockholder.

Q. Mr. Reinhardt holds about $2,100.00 worth?

A. Yes, sir; and Mrs. Edwards not so much as that; probably $500 or $600 worth; I don't recollect the amount; I have not thought of it for so long.

Q. Has the Sandoval Coal & Mining Company got a deed to the property by order of the circuit court of Marion county?

289 A. Yes, sir.

Q. Made by whom?

A. Made by the master in chancery, I believe.

Q. Did the Sandoval Coal & Mining Company secure any mining rights independent of those you got from the old company?

Objected to by plaintiff's counsel on the ground that the question seeks to elicit a fact that is incompetent and irrelevant to any issue in this case.

A. Yes, sir.

Q. Is your company operating those mining rights under the title received from Mr. Main through the receiver and from the court or through separate conveyance from other persons?

Objected to by plaintiff's counsel on the same ground as the last above stated.

A. We are operating now, so far as the mining rights are concerned, under conveyance made direct to the company and probably under conveyance from Mr. Main by the court. I will explain by saying that we took a great many mining rights ourselves to these mining rights that were first conveyed to us by Mr. Main and afterwards by the court—confirmed by the court or by the master in chancery. My recollection is that we took deeds to them again ourselves from the parties that had forme-ly donated, is my recollection about it.

Q. Do you know about what extent your mining rights there are—how much they cover?

A. No, sir; I could not state the number of acres. I have had it figured up. It consists in town lots, you know. We have been getting them by donation and by paying a little for them.

290 I could not make any correct answer without going to the books and figuring it up.

Cross-examination by Mr. CARR:

Q. Can you state the precise date of the organization of the Sandoval Coal & Mining Company? If so, state it.

A. No, sir; I cannot state the exact date. I can just simply give my impression now. I could have stated it if I had thought I would be asked that question.

Q. What is your best recollection as to the precise date?

A. I think this new company was organized in the fall or winter of 1878 some time.

Q. Were you at the sale by the receiver?

A. No, sir.

Q. Do you know how soon after the sale by the receiver to Mr. Main the new company was organized?

A. No, sir; but it was probably not very long. I could not give the date.

Q. The record shows that the sale by the receiver was on the 28th of September, 1878; now with reference to that

A. We probably organized immediately afterwards—made our final organization. I don't know how long they were hammering out there, but it may have run into September, October, November, or December—somewhere along there. I would not pretend to say, for I have not thought of it and I was not at the sale.

Q. You say you took $500 worth of stock in the new corporation at the solicitation of the Sandoval people?

A. Yes, sir.

291 Q. Name the person or persons who particularly solicited you to take this stock in the new corporation.

A. I think probably Dr. Edwards has called to see me about it, and there is Mr. Main; well, I guess about every man I met in Sandoval at that time asked me to help them out.

Q. Did they tell you about the suit of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois?

A. I don't know as they did, but I know of the suit and knew that the property had been sold. I understood all that, of course. I knew of course by rumor that there was such a suit, and that there had been a sale of property. I understood all about that.

Q. Were you in the court when it was in session?

A. I don't know; I may have been; I am almost always in the court-house when the court is in session. Out there in the country we have not got many entertainments and have got to go to court.

Q. You were in the clerk's office, too, more or less, I suppose, seeing who was being sued, and so on?

A. Yes, sir.

Q. You were not present at the sale made by George W. Herrod, as receiver, to Isaac Main, were you?

A. No, sir.

Q. You say you had an understanding at or about the time of the organization of the new corporation that the new corporation would pay the debts of the old corporation and take the property?

A. Yes, sir; specifying the debts.

Q. In the list of debts Mr. Townsend's claim was put in as a debt of the old corporation?

A. No, sir; I never heard of Mr. Townsend's claim or that

292 he had any claim until this suit.

Q. You knew that there had been a certificate for $10,000 worth of stock issued to him by the old corporation, did you not?

A. No, sir.

Q. What was your understanding about the old suit—what it was about?

A. My understanding was to close it up; that the thing had become bankrupt after the St. Louis parties—I did not know who they were—had failed to pay their assessments; that there was no money, and that the company had become bankrupt, and that these debts were pending there and they sold the property; that is my understanding; these Sandoval men were liable for the whole affair.

Q. You mean that the stockholders were liable for the debts as stockholders?

A. Yes; I understood they were liable.

Q. This was a plan to release them from paying the debt, was it, by selling out the property?

A. I suppose so; I did not know at the time anything about it, for I never expected to be interested in a coal mine on earth. I am just giving my opinion.

Q. You say that the debts of the old corporation that you paid off amounted to about $2,400.00 all told?

A. Yes, sir; probably a little over $2,400.00.

Q. You say you paid the consideration, the money, for the 2 acres of ground on which the shaft was sunk?

A. Yes, sir.

Q. Are you sure of that now?

A. Yes, sir.

Q. Who paid that, and to whom was it paid, and when?

A. It was paid to Mr. Main for the 2 acres of ground; that
293 was paid by our company, and paid to Mr. Main.

Q. Look at this deed from Samuel Ewing and wife to the St. Louis & Sandoval Coal & Mining Company and see whether it states that the $200.00 consideration was paid by your corporation or not.

(Exhibit "A" to the deposition of John B. Mears shown witness.)

Mr. SCHAEFFER: The deed speaks for itself.

A. It don't state who paid the money. It states that the $200.00 was paid to Samuel Ewing and then conveys a release to the St. Louis & Sandoval Coal & Mining Company to the following-described property.

Mr. CARR:

Q. It is the same land that the shaft is sunk on?

A. I could not say that.

Q. Give the date of the deed.

A. It is dated the 9th day of January, 1878.

Q. You say you paid how much to Isaac Main for the land?

A. $200.00.

Q. When did you pay that?

A. I could not give the date.

Q. How do you know that it was paid?

A. Just from my knowledge of the business of the Sandoval Coal & Mining Company; it was among the debts that were paid.

Q. Did you see it paid?

A. I could not state positively. I may have seen it paid and probably not; probably the treasurer paid it.

Q. You don't know, then, of your own knowledge that it was paid?

A. I would not say that I saw the money delivered to Mr. Main, but according to the run of the business I should say it was
294 paid.

Q. Was that $200.00 the consideration for the 2 acres of ground upon which the shaft was sunk?

A. Yes, sir; for 2 acres of ground; that was the same 2 acres, as I understand it.

Q. Have you any reason to believe that this money was not paid at the time specified in the deed?

A. I don't know anything about it. I did not know what was paid then or anything about that part of it at all.

Q. Was that $200.00 purchase-money embraced in the $2,400.00 that the new company paid on the debts of the old company?

A. Yes, sir.

Q. Have you a list of the debts specified?

A. I could not make out a list.

Q. Have you the books here by which you could make it out?

A. I think so; here is a statement. (Witness produces a memorandum, from which he reads as follows:) Frank Seymour, $1,495.60; Litchey & Steiner, $150.40; Isaac Main, $200.00; assessments paid by the old company, 114 shares, $356.00; 2 acres of land at $100.00 per acre, $200.00; Nodine, work on engine, $40.00.

Q. What is the aggregate?

A. I have not got it figured up, but that is the amount we paid.

Q. That is the amount for which Isaac Main bid off the property at the receiver's sale, is it not—the $200.00?

A. I don't know; probably it was. I was not at the sale.

Q. The record shows that he bid off the property for $200.00.

A. I don't know; probably it was. I was not at the sale.

Q. The record shows that he bid off the property at $200.00?

A. Probably he did; I was not there.

295 Q. It was talked about and you knew it?

A. Probably I did; after I got in there and was elected president, probably I knew just what he bid it in for and that may have been correct, $200.00.

Q. Did you know that the controversy in the suit of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois, grew out of $10,000 allowed by the board of directors to Ozias Townsend for his services rendered in organizing the corporation and also in securing certain mining rights to himself as trustee for the use and benefit of said company?

A. No, sir; I did not. I can give you my understanding of it if you would like to have it.

Q. What was your understanding, then?

A. My understanding was (I never heard of any $10,000 claim) that Mr. Townsend had not paid anything and that this thing was all falling on these Sandoval men out there—this whole debt, all the liabilities of the concern—and when it would become insolvent they would become responsible for the whole thing. At the time this thing occurred—this suit—I probably did not know anything about it, did not take any interest in it, only that I was anxious that this company or some other company would go on there at Sandoval, because I was interested in some property.

Q. Were you acquainted with Mr. Townsend at that time?

A. No, sir; I probably had seen him, that was all. I had no acquaintance with him at all.

Q. You gave a list of the stockholders in the new corporation; now, will you please give a list of the stockholders at the time
296 of its organization?

A. I will give it to you as near as I can. You mean the men of the old company that took stock?

A. Yes, sir.

—. Isaac Main took stock in the new company. Lambert Nolan may have had one share—probably he did. I heard him state that he did. Jacob Litchey, I would not state that he did not take any stock, probably he did; I don't recollect about that. C. N. Rockwell did. Andrew Roll never had any stock that I know of. Charles Reinhardt had stock in the new company. Francis H. Edwards had stock in the new company. Henry Wellhoener had stock in the new company. Frank Seymour, I believe, had stock in the new company.

Q. In your examination-in-chief you stated that you—that Mr. Townsend claimed the mine?

A. I mean by that this, that I did not know that Mr. Townsend claimed the mine or had any pretensions to claim of any kind until some time after we had struck coal, quite a while afterwards; I could not give the date exactly. The first I knew about it he brought suit to recover the mine in the name of the old company. I know he brought suit; we had been lawing a good deal and had got pretty well acquainted.

Q. Was this before or after the new corporation had paid the debts that you have detailed, when he made claim to the mine?

A. The debts were all paid—I think they were all paid. I could not say positively just when they were paid; probably we did not pay Mr. Seymour all this amount down; anyhow they were all paid, and it was after we struck coal quite a while—probably it may have been a year after we struck coal and was operating the mine—that Mr. Townsend brought suit against us. I don't think if we had not struck coal we would not have had any trouble.

297 Q. Have you got the deed made by the master in chancery under order of the court of the new corporation?

A. Not with me.

Q. Do you remember the date of the deed?

A. I do not, but it was after the Supreme Court had confirmed the decree of the circuit court in the case of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others.

Q. As soon as you organized the new corporation did you make a new contract with Frank Seymour to sink the shaft or did you simply step into the shoes of the old corporation, and have the contract with the old corporation carried out with him on the same terms?

A. No, sir; made a new contract with him.

Q. Different from the contract made by the old corporation?

A. I think so. I could not state positively. I don't know what

the old contract was. I don't know that I ever saw it, but after we had organized we entered into a new contract with Mr. Seymour, contract of our own.

Q. Did you see the contract made by the old corporation with Mr. Seymour?

A. I don't think that I ever did. I am inclined to think now that I never did see it.

Q. About what time was the shaft sunk down to the vein of coal?

A. Say we organized in 1878, some time in the fall or early winter; then say we struck coal along in September or October the following year.

Q. September or October, 1879?

298 A. Yes, sir; my recollection about it is that it was some time in September or October of the following year. I know we were hurrying and running night and day to get through before this mining-right business expired. That is my recollection.

Q. Did you commence to take out coal right away after you struck the vein?

A. No, sir; we may have taken out a little, but it takes a long time. I did not know it then, but I learned afterwards that it takes a good while to get a mine ready to take out coal to amount to anything.

Q. You have been operating the mine continuously since that time?

A. Yes, sir; you might say so.

Q. You have been taking out a good deal of coal every year?

A. Yes, sir.

Q. Can you state how many tons a year?

A. No, sir.

Q. Did you take out as many a 6,000 tons a year?

A. I don't know. We have got to go to the books, of course. I was president of the company, but they did not give me $10,000, and I did not pay much attention to it as Mr. Townsend. Those things I could not state without going to the books. I am not a salaried officer. When we are in good running order and trade is good we have taken out probaply as high as 15 or 20 cars a day, 15-ton cars, and when we got up to that we thought we were doing a pretty good business. When it slackened up in the summer we did not take out so much coal. I do not carry those things in my head. We had it figured out time and time again what we have done, in the winter, you know.

299 Q. Can you give us an approximate idea of about the number of tons you have mined any year?

A. No, sir; I could not; that would take a great deal of figuring to tell *that*, but we could give that from our books. We keep regular books showing our sales and the amount of money we pay out and receive.

Q. About how many men do you run, ordinarily?

A. That varies from time to time; men are going and coming about coal mines all the time; some days we have more and some

days less. I presume that we have had as many as 100, 110, or 115 at work in the winter time.

Q. You are running how many men now?

A. I don't know, I have not been about the mine, but not so many now, for the trade has been very dull, and whenever your trade gets dull men that do not own property and who have not got families pick up and hunt somewhere else.

Q. Give us the approximate number.

A. Probably 60 or 75 men now; maybe more than that; I am just guessing at it. I don't think I have asked when I have been out there how many men they had.

Q. Have you extended beyond the 2 acres in your mining rights?

A. Yes, sir; in almost every direction.

Q. You have gone into the coal — covered by these mining rights embraced in the deeds to Mr. Townsend, have you?

A. I think so.

Q. You have been utalizing those mining rights right along, have you?

A. I presume so. The mining rights they got there were disconnected, and we had to fill up by buying other property adjoining; for instance, there would be a two lot out. My recollection
300 is that we bought 2 acres up there right north of the Ewing 2 acres, and then we bought some south of the Ewing 2 acres to get it out in that direction.

Q. You bought that in order to have the access to the mining rights secured by Mr. Townsend?

A. To get out from the mine; to get to some other land that we bought, to some other mining rights that this old company had.

Q. As fast as you have got your mine drift extended to the mining rights embraced in the deeds to Mr. Townsend you have mined coal there?

A. Yes, sir; we did not keep off of anything, because the deed had Mr. Townsend's name on it.

Q. You just took it as you come, regularly?

A. Yes, sir. Of course we have taken coal out from under his, and then we took deeds of our own.

Q. How many years afterwards before you took the deed to yourself?

A. Probably 2 or 3 years. It was after the suit was commenced.

Q. When you sunk your shaft down to the vein of coal, within 2 years from the date of the deeds to Mr. Townsend for these mining rights, you considered then that you were entitled to use those rights to carry on mining therein?

A. Yes, sir.

Q. And you went ahead and did use them?

A. Yes, sir.

Q. Why did you come to take the deeds to the same rights 2 or 3 years afterwards, when you had already had them conveyed by the deeds to Mr. Townsend?

A. The matter was in litigation, and we did it in safety for ourselves.

301 Q. You wanted to make assurance doubly sure?

A. Yes, sir.

Q. You simply took the deeds out of caution then?

A. Yes, sir; it was caution; we thought if the title was not good we had better perfect it.

Q. Look at this State geologist's report by the authority of the governor of the State of Illinois and state whether you ever saw it before.

A. No, sir; I don't think I have seen it before; I have no recollection of that book.

Q. You knew there had been a geological survey of the State of Illinois before the war?

A. Yes, sir; I have seen reports of the geologists of Illinois; I have them in my library, if I recollect right.

Q. You may have read this report, may you not?

A. I don't recollect that I have.

Q. This report made by J. G. Norwood, as State geologist, and published by order of the governor, says that there is a 6-foot vein of coal at Centralia; now, how far is Centralia from Sandoval?

A. 6 miles.

Q. Due south, is it?

A. About due south.

Q. Was there not a very reasonable prospect then that that Centralia vein of coal extended up to Sandoval?

A. There was a prospect that it would extend that far.

Q. Is not that portion of the State underlaid with coal at a greater or less depth?

A. No, sir; the geologist plays out once in a while; for

302 instance, at Sandoval we struck coal at 603 feet; at Odin, 4 miles east, they struck coal at about 800 feet; at Salem at still a greater depth, and at Flora it plays out, and going west between Sandoval and Breese where you strike coal at both places, one at 603 feet and at Breese probably 400 feet, probably not that much, and then at Carlisle you cannot get coal at all; there is a break somewhere.

Q. How far is that from Sandoval?

A. Carlisle must be about 13 miles west; there seems to be breaks in this coal vein.

Q. When you organized this new corporation for the purpose of sinking the shaft begun by the old corporation you had full confidence that you would strike coal at some depth?

A. No, sir; I could not say that I had full confidence; I was a little ticklish about it and did not put very much in it to start on.

Q. You had some confidence in it?

A. Of course, all I judged by and all I thought about. I did not think anything about the reports of the geologist at all, but I thought about Centralia.

Q. You knew it was there?

A. Yes, sir; I had seen it and knew it was there and I thought

we might strike it at Sandoval, and I think probably I talked with the geologist about it. I was interested in it after I got into it; interested in finding coal, because we had then spent a good deal of money in sinking this shaft. I was very much pleased when we struck it.

Q. Your expectations were realized?

A. Yes, sir.

Q. It is a 6-foot vein?

303 A. We call it that, but it is not that much. It is a little over 5 feet; it varies—no place 6 feet.

Q. Do you know how many thousand tons of coal there are to an acre in a 6-foot vein?

A. No, sir.

Q. You are not well enough up on that to say?

A. No, sir. I suppose I have had all those things figured at me, but I did not carry them in my head. I expect I have had those coalmen figure it and tell me all about it.

Q. The company you went in with—the new company—had full confidence that if they sunk a shaft deep enough that they would strike this vein of coal?

A. I think they were just like all others who commence sinking a shaft. I think some of them got to believe pretty soon after the second time we called upon them about the assessment that they never would strike coal in the world; some others would think that if we kept going we would strike coal, and then all would get out of heart, everybody would seem to give it up. I guess I was the most resolute fellow in the lot.

Q. You had confidence in the outcome of the enterprise?

A. I always go ahead until I know I am beat, and I want to know it good, too, and then I quit.

Q. Those mining rights are the principal value connected with the coal mine, are they not?

A. No, sir; mining rights I don't consider worth anything unless coal is struck.

Q. After the coal is struck, then, you consider them valuable?

A. After they strike coal of course they are worth so much,

304 for if you buy royalty of course it costs so much; some places they pay more and in some less.

Q. When you have to pay royalty how much a bushel do you have to pay generally?

A. I don't know. We never paid by the bushel. I would not be willing to pay on that basis.

Q. It ranges from one-fourth to one-half cent a bushel?

A. I have not bought any.

Q. You don't know what they pay on royalty then?

A. No, sir.

Q. Do you remember the time when the supreme court of Illinois confirmed the decree in the case about which you have been talking?

A. I could not give the date.

Q. The record says January 25th, 1886.

A. I presume that is correct.
Q. You think that is about the correct date?
A. Whatever the record says would be the probable date.

Redirect examination by Mr. SCHAEFFER:

Q. As to the value of those mining rights, what were they worth before the shaft was sunk the 114 feet?
A. Before you strike coal I don't think mining rights have any value. Of course, they become valuable after you strike coal. If you do not strike coal of course they are worth nothing.
Q. What is the reasonable value, after you have struck coal, per acre?
A. I would not be willing to pay by the acre over $20.00 or $25.00 for coal lands.
Q. You have an additional shaft there, have you, on different ground?
305 A. Yes, sir.
Q. And your works connect with both shafts?
A. Yes, sir.

Recross-examination by Mr. CARR:

Q. Were not coal lands in 1878, out in that part of Illinois where these lands are, worth $30.00 an acre?
A. I think not; we call it farm land; we do not rec-on anything for coal, although we are satisfied now that from Sandoval to Salem there is coal at some depth; for instance, I have got land right close to Salem coal mine, and I gave the royalty wherever they wanted it; did not consider it worth anything on earth to me if *if* there was coal under there, but it might be worth something to somebody that sunk a shaft; since that shaft has been sunk I have got land, right adjoining this that I gave, which is not worth $1.0-. I could not get 25 cents an acre more for it on account of the coal shaft; it has not increased the value, nobody wants to buy it for the coal that is under it, and when you buy it for farming purposes exclusively it is not worth anything for that.
Q. Do you know anything about the sale of coal lands around that part of the State not for agricultural purposes?
A. Just for the purpose of the coal under it?
Q. Yes, sir.
A. No, sir; I do not, only as we bought town lots, little strips right in the town; where we have got to cross a *peice* of land in order to connect with another *peice* of property we might have to pay twice as much as the land is worth; we might be forced to do it,
306 but I don't know as we did anything of that kind in this case.
Q. In that case you would pay $50.00 or $75.00 and acre, would you?
A. No, sir; I don't think we would have to pay any such price as that, but I am satisfied that we have paid a good deal more than it was worth.

Q. What did you pay?

A. I was goin' to try to recollect what we paid Mr. Ewing; we bought that for the purpose of building a miner's house on. We paid $500 for 2 acres right north of the 2 acres for the purpose of building our house for the miners, and right in town.

Signature waived by agreement of council.

The said ISAAC MAIN, being first duly sworn and cautioned by me, as special examiner, as a witness to the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows:

Direct examination by Mr. SCHAEFFER:

Q. Please state your name, age, residence, and occupation.

A. My name is Isaac Main; age, 68; residence, Sandoval, Illinois, and I am in the mercantile business, more or less.

Q. Were you a stockholder in the St. Louis & Sandoval Coal & Mining Company?

A. Yes, sir.

Q. What amount of stock did you have?

A. I had $500 worth and by misrepresentation I took $500 more.

307 Q. When did you subscribe for your stock?

A. I don't know as we subscribed at all; Mr. Townsend came out there and said to us that if we could get him some 600 or 700 acres of royalty he would sink a shaft to the coal; he said that the company was doing very well and the stock had already been taken and that he had some $40,000 lying idle in St. Louis doing nothing; on that proposition we went to work and got up the royalty and he agreed to pay me $1,00 to make the title good, but that was never paid; then he says, after we had done that, "You have been so generous towards me that if you want to take a little stock I will give you some;" says he, "The books are open now to take it." We got up this royalty and he said if we would do it he would sink the coal shaft.

Q. Who got up the mining rights?

A. Mr. Nolan and myself and Esq. Roll; I don't know, but I think there were some other parties; I know Mr. Nolan and myself were among the parties.

Q. What, if anything, did Mr. Townsend do in regard to getting up those mining rights?

A. I don't know as he did anything, only he came and stayed there; he might have ridden around with Esq. Roll, for all I know; if he got an acre of ground there I don't know it; he said if we would get up the royalty he would sink the shaft, and we did it, and he said then, as we had been so generous towards him, he would let us have a little of the stock, as he wanted to establish an office at Sandoval.

Q. Were you a director in the company?

A. Yes, sir.

Q. When and for what length of time?

308 A. I think we elected officers somewhere about the 12th of December and I held the office until Mr. Townsend was voted out; that he had no stock; it was some time about the 1st of May.

Q. Was Ozias Townsend, the plaintiff in this suit, a stockholder in that company?

A. Yes, sir; I saw the figures opposite his name.

Q. What amount of stock had he?

A. He had thirty-nine thousand and some odd hundred dollars worth; I would not be positive, but it was thirty-nine thousand and something.

Q. Was he a director also, and president and superintendent of the company?

A. Yes, sir.

Q. From what time to what time was he president of the company?

A. His time commenced, I believe, on the 1st of January; it seems to me it was somewhere about the 1st of May when the secretary reported that he had no stock; the by-laws require that a man should own stock to be an officer of the company, and therefore the office was declared void.

Plaintiff's counsel objected to the latter part of the answer, "Therefore the office was declared void," as incompetent and irrelevant to any issue in this case; that the stock could only be declared void by the board of directors when legally convened.

Q. Look at this book and state what it is.

A. That is the report of our meetings.

Q. Does that book contain a full and complete and true record of the proceedings of the meetings of the stockholders and directors of the St. Louis & Sandoval Coal & Mining Company from the time of its organization until its dissolution?

A. It does so far as I can see.

309 Q. Was that book introduced in evidence in the case of Edwards and others against the St. Louis & Sandoval Coal & Mining Company and others in the circuit court of Marion county, Illinois?

A. According to my recollection it was.

Q. Have you a copy of those minutes?

A. I have.

Q. I wish you would produce it and make it an exhibit to your deposition.

Plaintiff's counsel objected to so much as purports to be a copy of the proceedings of the board of directors of the St. Louis & Sandoval Coal & Mining Company, held at East St. Louis, Illinois, May 2nd, 1878, for the reason that that meeting was not called nor held under or in pursuance of the by-laws of the corporation.

(Witness produced paper, which was marked Exhibit "G" and hereto attached.)

Q. Look at that book and state what that is (handing book to witness).

A. I don't think that I ever examined this.

Q. I will read a little from the record of your evidence, taken by E. L. Stofer, offered in open court in Marion county, Illinois, on the trial of the case of Edwards and others against the St. Louis & Sandoval Coal & Mining Company and others. It says, "They also read in evidence books marked Exhibit "A" and "B." Is that book now handed you, marked Exhibit "B"?

A. (Witness examines book.) I think there is "B" on there.

Q. On the minute book and account book—that is, the book of receipts and expenditures of the said St. Louis & Sandoval Coal & Mining Company, the following pages in the Minute Book, pages 1 and 17, inclusive, that is the one you had before, and the Account Book, pages 1, 200, and 201. Now, will you refer to page 1 in that book and read out the items?

A. Page 1 reads as follows:

310 "OFFICE OF ST. LOUIS AND SANDOVAL
COAL AND MINING COMPANY.

Indebted.

ST. LOUIS, MO., *Feb.* 21, 1878.

Jan.		Advanced from Henry Wellhoener to pay a part of buying parcel of ground for sinking shaft	$100 00
"	10.	Samuel Ewing, a note due on 15th day of Feb., 1878, to complete payment of land bought to sink shaft on	100 00
"		A note to B. Gratz Brown for services, dated Jan. 10th, payable 60 days after date	200 00
"	31.	Salary for superintendent	150 00
"	"	" " secretary and treasurer	15 00
Feb.	1.	Sinking shaft, 33 feet, at $18.00 per foot, $594.00; 40 per cent. off	356 40
"	"	40 per cent. due at completion of contract	237 60
"	23.	Advanced from Isaac Main for paying part of Samuel Ewing note	36 00
"	"	Advanced from Henry Wellhoener for paying part of Samuel Ewing note	64 00
"	"	Advanced from Ozias Townsend	25 00
"	"	Henry Wellhoener, advanced	211 40
"	28.	Salary for superintendent	150 00
"	"	" " secretary and treasurer	15 00
March	1.	Sinking shaft, additional 60 feet, at $18.00 per foot, $1,080.00; 60 cents on a dollar	648 00
"	"	40 per cent. due on completion of contract	432 00
"	4.	John B. Mears, for services rendered	35 00

March 4.	Bill of Isaac Main		$17 35
" "	" " Henry Wellhoener		16 50
" "	Part of bill of Ozias Townsend		20 00
311			
April 1.	Sinking shaft, additional 7 feet, at $18.00 per foot, $126.00; 60 cents on a dollar		75 60
	40 per cent. due on completion of contract	50 40	
" "	Sinking shaft, additional 14 feet, at $18.00 per foot, $252.00; 70 cents on a dollar		176 40
	30 per cent. due on completing contract	75 60	
		$795 60	$2,411 65"

Page 200 reads as follows:

"OFFICE OF ST. LOUIS & SANDOVAL
COAL & MINING COMPANY.

Money Paid In.

DR.

1878.		$ c.
Feb. 20.	Isaac Main	50 00
" "	L. Nolan	5 00
" "	C. N. Rockwell	15 00
" "	Charles Reinhardt	25 00
" "	Francis H. Edwards	25 00
Feb. 23.	Jacob Lichty	10 00
" "	Ozias Townsend	25 00
" "	Frank Seymour	10 00
March 4.	John B. Mears	10 00
" "	Ozias Townsend	20 00
" "	Henry Wellhoener	250 00
April 30.	George Wharton, per check	1,000 00"

Page 201 reads as follows:

Money Paid Out.

1878.	CR.	
Jan. —.	Samuel Ewing, for parcel land	$1,100 00
Feb. 23.	Frank Seymour, for sinking shaft 33 feet, at $18.00; 60 cents on a dollar	356 40
312		
Feb. 23.	Samuel Ewing, for his note	100 00
March 4.	To cash, John B. Mears	10 00
" "	" " " " by O. Townsend	20 00
May 1.	To George Wharton, on his demand check returned	1,000 00

Q. You may state what you know about those 2 books, where you got them and what you did with them.

A. Mr. Wellhoener wrote me a note to come out and see him. It was after this thing had got into trouble. I went to his office and he stepped out and was gone a little while, and his son-in-law said, Here is a package that Mr. Wellhoener wants you to take home with you, and I took it up and walked off.

Q. You took that home with you to Sandoval?

A. Yes, sir; I did not look at the books; they were all tied up in a bundle.

Q. Afterwards, in the trial of the case, they were brought into court?

A. Yes, sir.

Q. That was the last you saw of them, I suppose?

A. Yes, sir.

Q. Did the plaintiff, Ozias Townsend, do anything as president of the St. Louis & Sandoval Coal & Mining Company in the interest of said company after May 2nd, 1878?

A. No, sir; he was no more president.

Q. What were his services as president and superintendent of the St. Louis & Sandoval Coal & Mining Company reasonably worth to the company?

A. I will have to bring up a little explanation. He told me——

Q. Give your estimation of the value of his services.

313 A. They were worth nothing.

Q. Give the reason or data upon which you base your estimate of the worth of his services as said officer.

A. He said that he paid B. Gratz Brown $500.00 out of his own pocket for services in getting up this company, and Mr. Brown charged $200.00 more, and we laid it before the meeting and thought that it was too much money to pay a man for so little work; it was put off to the next meeting, and he came at us pretty strong; said that Mr. Brown had done so much that he thought that we ought to be willing to do that much after he did so much; we talked the matter over and he said he had about all the stock and he would have all the expenses to pay, and therefore we voted him the $150.00 a month as president and superintendent of the institution.

Q. Before the time of Mr. Townsend's election as president and superintendent of the St. Louis & Sandoval Coal & Mining Company what, if anything, did he do in the way of getting up the organization of the company, securing subscriptions of stock, obtaining mining right, or anything else for the benefit of the company?

A. He did nothing further than give us a note for $200.00 to B. Gratz Brown; he signed his own name to it as president, Mr. Wellhoener, I think, as treasurer, or John B. Mears as secretary, I forget which, and it was sent out there to us fellows and we had to pay it; but whoever got this thing up, I don't know anything about that, about getting up the company; I don't know anything about it, only that he came over there and said that the company was all gotten up.

Q. Was that before you subscribed for stock?

A. Yes, sir.

Q. How about the mining rights?

314 A. As I said before, when we got up this royalty, so many acres of land, he said that he would sink the shaft for us, and that is all he asked for us to do, to get them up for him, and we did it; and then he said as you have been so generous as to get these mining rights up, that we might have the privilege of taking some stock in the company, as he wanted to put a director or officer at Sandoval.

Q. Who secured the mining rights?

A. As I said before, we had a meeting and we divided the town off on each side of the railroad and appointed men, who went around and solicited parties to give the royalty, and they gave it very readily, excepting very few; I know we got Samuel Ewing's 80 acres of land; he was the first man we went to; he took the acknowledgement to the mining-right deeds and he paid him his fees; that would be my understanding of that; I supposed at the time that Mr. Roll took the acknowledgements of the deeds and that Mr. Townsend took it or got their $200.00 or $300.00 worth of stock for his services, is the way that I understood it; of course I did not see that deed; that was before we met and organized over in East St. Louis; Mr. Roll voted his 5 shares here at the election of directors, but he said that Mr. Townsend had promised him a directorship and was to give him that much stock for doing the work.

Q. What were Mr. Townsend's services and expenses, if any, before his election as president worth to the St. Louis & Sandoval Coal & Mining Company?

A. That was got up before I came in; he got the company up, so he said, over there.

Q. What were his services worth, so far as you know them?

A. If a man takes out most of the stock himself, he don't require very much work to get the company up; as he had thirty-

315 nine thousand and a few hundred dollars' worth before he got any there, he must have had $43,000 or $44,000 before he let us follows have any over there, although he said that the company was already made up; as I said before, he came over there once or twice.

Q. My question was, what were his services worth so far as you know them?

A. In getting up the 2 papers I suppose it would be worth, the 2 papers, some $7.00, $8.00, or $9.00; they would have to pay the justice of the peace or whoever they were acknowledged before; they would have to pay him twenty-five cents; I suppose $7.00 or $8.00 would be the whole expense; I suppose it would be; I have helped to get up 3 or 4 companies and it seems to be something about that.

Q. What were his services worth in getting up the mining rights?

A. As I have stated before, we got them up in consideration of him sinking the shaft; that is the proposition made to us.

Q. Did the St. Louis & Sandoval Coal & Mining Company ever receive any pecuniary benefit from the services of Mr. Townsend in

its behalf while he was in any way connected with said company or acting for it?

A. Not one farthing; he claimed here that he got some machinery, but I see it is crossed off the book; he claimed that he had ordered an engine and boiler from Smith, Beggs & Co. to sink the shaft, but I see they crossed it off the book.

Q. Was there at any time a meeting of the directors of the St. Louis & Sandoval Coal & Mining Company after May 2nd, 1878?

A. Not to my knowledge there was not.

Q. If Mr. Townsend, after May 2nd, 1878, used the name of the St. Louis & Sandoval Coal & Mining Company in the institution and prosecution or defense of any suit or suits had he any
316 right or authority from the company to do so?

Objected to by plaintiff's counsel because it seeks for the individual opinion of the witness and because the facts sought to be elicited are incompetent and irrelevant to any issue in this case.

A. Not any.

Q. Was it ever agreed by and between Mr. Townsend and the directors or stockholders of the St. Louis & Sandoval Coal & Mining Company that Mr. Townsend should hold any part of the stock subscribed by him in trust for the company and to be sold by him and the proceeds of the sale placed in the treasury of the company or anything of that kind or nature?

A. Nothing was ever mentioned in the board that I heard of.

Q. Who paid Samuel Ewing for the 2 acres of land on which the coal shaft was sunk, and whose money was used in paying for it?

A. I paid it; my money was used.

Q. Did the Sandoval Coal & Mining Company afterwards refund that $200.00 paid for the land?

A. Yes, sir.

Q. Did you or the other directors of the St. Louis & Sandoval Coal & Mining Company at any time attempt to hinder or prevent Mr. Townsend from selling stock or accomplishing the object of the company?

A. No, sir.

Q. Did you, Mr. Edwards, and Mr. Wharton in a body or otherwise try to *sy*ll $4,000 worth of so-called paid-up stock or any amount of said stock in St. Louis, Missouri, or anywhere else for 50 cents on the dollar or for any other sum?

A. No, sir; we never did; I had it offered to me for a good deal less money, that paid-up stock or that they claimed was paid-up stock.

317 Q. Did you in any way and at any time interfere with the sale by Mr. Townsend of any of the stock?

A. Never.

Q. Who was the instigator of the suit of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois, and why was that suit instituted?

A. It was some little time after the thing had become insolvent—

had no money—when the treasurer came over there about that one assessment which was to be paid and we did not have money enough and I had to advance money to finish paying it so we could pay Mr. Seymour; he said those parties here had not given him any money; that they had promised and promised and kept putting it off and then he came over there, and then after that we held a meeting and we came over here for that purpose, to see what could be done, for we were anxious to have the coal mine go on. I went to Mr. Wellhoener and I went to Mr. Blackman and I inquired for Mr. Townsend, and they said he had gone into the country, and we came on down here to the treasurer's office at the court-house; we went & got the treasurer's books and we could not find Mr. Townsend's nor his wife's name mentioned on that book, and Mr. Wharton, who had subscribed heavily, he said, and that he handed over the $1,000. We wanted to see if we could make it out of Mr. Wharton. We found considerable property there in Mr. Wharton's name and found mortgages which covered the whole thing; and then we went over here to a lawyer and told him what our business was; that we wanted the shaft to proceed or wanted to go on with the work; we told him our business, what we had come over here for, and were going to force these fellows to pay up, that the work may pro-
318 ceed. We named over these gentlemen, Mr. Townsend, and Mrs. McCabe, and 2 or 3 others; Mr. Wharton with the rest. He says, "I know most all these parties, but I don't think you can make anything out of them;" but, says he, "If you want to prosecute them I will prosecute them, but you will have to leave me $50.00 as a retainer and $50.00 when the suit is completed. Then I thought the thing was a foregone conclusion and the best plan was to proceed against them and throw the thing into bankruptcy in Salem, Illinois; and on the decision of that man and from the record we had here we were satisfied that these parties were not worth anything. Then we went to work and threw the thing in bankruptcy and closed it out. I took an active part and was anxious to have the thing go down. They had no property here that we could ever get hold of and that we would have to prosecute the work to its completion.

Q. Do you owe the St. Louis & Sanfoval Coal & Mining Company anything?

A. No, sir; they are indebted to me.

Q. Do you owe the plaintiff, Ozias Townsend, anything?

A. No, sir.

Q. Upon a fair adjustment of accounts between the St. Louis & Sandoval Coal & Mining Company and the stockholders and between its stockholders among themselves who would be indebted to the other?

Objected to by plaintiff's counsel on the ground that it calls for the opinion of the witness upon the very matter that is in controversy in this suit, and is therefore incompetent and irrelevant.

A. He would be owing the stockholders over there.

Q. Who would be?

A. The St. Louis & Sandoval Coal & Mining Company would be owing the parties over in Sandoval, Illinois.

319 Q. What amount have you paid out for the company on your stock?

Plaintiff's counsel objected to the witness answering the question on the ground that it seeks to elicit facts that are incompetent and irrelevant to any issue in this case.

A. I paid out for services and one thing and another over $1,000.

Q. Did you testify substantially to the same facts in the case of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois, as you have testified here?

A. The purport of the thing, I presume, is the same. The words may be different.

Q. Is there anything else that you wish to state?

A. The 2nd meeting we held in St. Louis—that is the first meeting after the organization—I think, was on the southeast corner of 9th street.

Objected to by plaintiff's counsel on the ground that it is incompetent and irrelevant to any issue in this case.

WITNESS continued: And I forget the name of the other street. Mr. Townsend represented to me that he owned the whole block there and the room we were in. He said he would have the floor carpeted and would have some chairs in there and he would have a hole cut into the side of the building where we could put the letters in there that belonged to the company. Afterwards I went up and took dinner with Mr. Townsend and he lived upstairs. We had a very pleasant chat and a good dinner, and he showed me what he owned there. I forget how far his title went or his

320 claim on the house that he lived in. I asked him if he would not rather live below and he said, No; that his wife preferred to live upstairs. I afterwards ascertained that he did not own the thing; at least, it did not show so on the record.

Q. Were these respresentations held out to you as an inducement for you to subscribe for some more stock?

A. Yes, sir; those were the inducements.

Q. Did you do it on his representations?

A. Yes, sir; and he finally sent me a certificate of stock for $500.

Q. Did you do it on his representations?

A. Yes, sir; and he finally sent me a certificate of stock for $500.

Q. That made up your $1,000?

A. Yes, sir.

Cross-examination by Mr. CARR:

Q. State how many shares you subscribed for at the organization of the St. Louis & Sandoval Coal & Mining Company.

A. 5.

Q. State when you made that subscription.

A. It was over in Sandoval. It was before that organization meeting at East St. Louis a short time, a few days before that—I think the 12th or 20th of December that we organized, but I am not positive as to the date.

Q. Do you remember the date when you organized the corporation?

A. I think it was the 8th of December.

Q. Did you attend the meeting at which the company was organized?

A. Yes, sir.

Q. Were you elected a director at that meeting?

A. Yes, sir.

321 Q. Did you ever go to Capt. Townsend's house and talk to him about making you a director?

A. No, sir.

Q. You did not?

A. No, sir; I met him in East St. Louis; he came over there.

Q. Did you ever request him to make you a director?

A. No, sir.

Q. How did you come to become a director?

A. It was voted on; Dr. Edwards, I suppose, electioneered a little.

Q. You were regularly elected a director at that meeting, were you?

A. Yes, sir.

Q. What were the names of the other directors elected at that meeting?

A. Mr. Townsend—and I forget the names; they all were directors, maybe; one or 2, I presume; I never saw afterwards.

Q. Refresh your memory from the book. (Minute book handed witness.)

WITNESS reads: "Ozias Townsend, John B. Mears, Henry Wellhoener, Isaac Main, James Shields."

Q. You gentlemen who were elected directors at that meeting continued to exercise the functions of directors of that corporation from that time until when?

A. I don't know whether Mr. Shields met with us more than once or not; it was not a very great while, not over a month or 2, before Mr. Blackman was elected in his place.

Q. Did Mr. Shields resign?

A. I don't know what was the reason; I could not say whether he resigned or not.

Q. Was True W. Blackman elected to fill his place afterwards?

A. When Mr. Blackman was elected I was not present at that meeting; it was to fill somebody's place; perhaps it was Mr.

322 Shealds; he was elected at a meeting at which I was not here.

Q. They did not act as directors, did they?

A. I don't know whether Mr. Shealds attended more than one meeting or not.

Q. At that meeting of the directors of the St. Louis & Sandoval

Coal & Mining Company held at East St. Louis, Illinois, December 8th, 1877, did the directors not choose Ozias Townsend for the president and *ex officio* superintendent of the corporation?

A. I don't think we did at that meeting; I think we did at a subsequent meeting.

Q. The minutes here show it at that meeting.

A. Of course, I am not going back on the minutes; then, probably, we did.

Q. You were present at that meeting?

A. Yes, sir.

Q. And participated in it?

A. Yes, sir.

Q. At a directors' meeting of the corporation held at 614 N. 9th street, in the city of St. Louis, Missouri, the minutes show that you were present with the directors, and that on motion the salary of the president and *ex officio* superintendent was fixed at $150.00 per month for the first term commencing on the 1st day of January, 1878.

A. Yes, sir.

Q. Did you vote for that resolution fixing the salary of the president and *ex officio* superintendent?

A. Probably I did. I wanted a coal mine; we were very anxious, and he had the money.

Q. You voted for that resolution?

A. I would not say, but I say probably I did.

Q. At the time of the adoption of that resolution fixing
323 the salary of the president and *ex officio* superintendent at $150.00 a month were you not satisfied that that was reasonable compensation for that office?

A. No, sir; I was not.

Q. Why did you then vote for it?

A. Because he had all the stock and he would have to pay the whole thing by himself, Mr. Townsend.

Q. Did not you and a number of other persons subscribe for a number of shares in the capital stock prior to that?

A. Over in Sandoval when he made this proposition; yes, sir; over there we took it on his recommendation.

Q. Answer as to whether you subscribed or did not subscribe—consent to take the stock.

A. Yes, sir.

Q. Why, then, do you say that Mr. Townsend had all the stock?

A. Because he had thirty-nine thousand and some hundred and the capital stock was $50,000.

Q. Then, he did not have all the stock?

A. No, sir; I did not say that he had all the stock. I said that he had most of the stock and would therefore have to pay the bills out of his own pocket.

Q. Then, you were satisfied to allow him $150.00 per month for acting as president and *ex officio* superintendent of the corporation?

A. I knew, though, that it was too much, but still let him have it. I knew it was too much.

Q. Do you think $150.00 a month for a corporation of that size was too much for a man that was performing the duties of president and *ex officio* superintendent?

A. Yes, sir; $50.00 a month was more than it was worth
324 when we had no company except $3,000 or $4,000.

Q. You had laid the foundation for a company to do considerable business, had you not?

A. We were inveigled into it.

Q. That is no fault of yours, is it?

A. When it developed we saw it.

Q That is the way you look at it now?

A. Yes, sir; and I did then.

Q. You were in favor of it?

A. I thought then it was too much.

Q. Then, why did you vote for it?

A. Because he had about all the stock and would have the money to pay out of his own pocket.

Q. Did he not sell you $500.00 worth of this stock after the organization of the company?

A. He did by making these representations to me about owning so much property and everything.

Q. Are you sure that he said he owned a whole block of houses in the city of St. Louis?

A. Yes, sir.

Q. How did he happen to make such representations?

A. He said that before we went into the house, he was showing me what he had, and this room we went into.

Q. How did he come to make such representations as that?

A. The same as if I should come to your house and you should show me a fine horse. I suppose it is the same thing.

Q. Was there any reason or motive for making such representations after the company was organized?

A. I cannot tell what his motive was.

Q. I am asking if there was any, what reason he could
325 have had for making such representations at that time?

A. To show that he had lots of property.

Q. What had that to do with it?

A. If you and I were to go into partnership and you had lots of property I would go in with you sooner than if you did not have anything.

Q. You thought at that time that that stock was good stock to have, did you?

A. Right in Sandoval there he talked about having so much money to put the shaft down. I thought so; yes, sir.

Q. His having the money did not do you any good?

A. We paid what we agreed to pay and if he had paid what he had agreed to pay we thought it would make a good thing.

Q. You regarded the prospects of the corporation as being good at that time?

A. When we first started out.

Q. And you were anxious to get all the stock you could swing, were you not?

A. No, sir; but we were anxious for a coal shaft.

Q. You had confidence that there was a good paying vein of coal underlying that 2 acres of ground and all that was necessary was to — a shaft sunk down to it to develop it and make it a good paying investment?

A. I had some doubts.

Q. Why did you take the additional $500 in stock after the company organized?

A. He says you won't have to pay over 30 or 35 per cent. on your stock for the $50,000 capital; that we would not have to pay out but very little, not exceeding 30 or 35 per cent.

Q. You regarded it, then, as a first-class investment?

326 A. No, sir; I began to have my doubts about the matter then.

Q. Why did you take the additional $500 worth of stock, then?

A. Because he said I would not have to pay over 30 or 35 per cent.

Q. That was a matter of opinion, then, on his part?

A. $50,000 capital *and* 5 per cent. would be $2,500 assessment. It would not take but very few — to pay it.

Q. You had as good opportunities for judging how much money it would take for sinking that shaft and finding the coal as he had?

A. I had no experience. I don't know whether I had or not.

Q. You lived on the ground there?

A. I lived in Sandoval.

Q. He lived in St. Louis?

A. Yes, sir.

Q. Were not your opportunities better than his for ascertaining in regard to the prospects of the company?

A. He may have had experience in sinking mines and he may have had better opportunities than I.

Q. He did not profess to have any experience in coal mines before that?

A. I don't know whether he did or not.

Q. He never represented that he had, did he?

A. I don't know.

Q. Did you not go in largely on his judgment instead of your own in regard to coal there?

A. No, sir; he said this could be so arranged that all the money would go through my hands in paying my hire and he said it would be a big thing for me.

Q. You could see as far into that as he could, could you?

A. No, sir.

Q. That was a matter of opinion you could not see as far as he could?

327 A. No, sir; not in that line.

Q. Why not?

A. Because he had the most of the stock and was president and had more power than I had.

Q. That had nothing to do whether the coal was there or not?

A. No, sir.

Q. Were not your opportunities as good as his or rather better than his to judge whether coal was underlying that mine or not?

A. I suppose it was; of course I did not know, but I supposed it was.

Q. The organization papers show that he subscribed for 393 shares of the capital stock of this corporation. Now, he let you have 5 shares of it, did he, as soon as you wanted it?

A. The last 5 shares. No; he had that after he gave us our shares.

Q. You went in at the organization and took 5 shares, did you?

A. Yes, sir; and he voted that amount at the election. He had thirty-nine thousand and some hundred dollars' worth; I looked at the book and saw it.

Q. That was 393 shares?

A. Yes, sir.

Q. You voted 5 shares?

A. Yes, sir.

Q. Just what you subscribed?

A. Yes, sir.

Q. And he subscribed 393 shares?

A. Yes, sir.

Q. He let you have 5 shares out of his after the company was organized?

A. No, sir.

Q. When did you get your additional 5 shares?

A. A month or 2 months after.

328 Q. Don't you know that after the organization of the company, on the 8th day of December, 1877, he tried to sell out the shares as rapidly as he could for the purpose of turning the money arising from such sale into the treasury of the company?

A. No, sir; I don't know anything about that.

Q. Don't you know that he made a deal with Capt. Wharton to take $10,000 worth of this stock of his off of his hands?

A. Yes, sir; he said so; I did not see it.

Q. Did you talk to Capt. Wharton about it?

A. I don't know as I did.

Q. You say that $4,000 of the paid-up stock was offered to you for less than 50 cents on the dollar?

A. I said some of it. I think that Mr. Blackman offered me $1,000 that he claimed he had.

Q. What do you know about Capt. Wharton's $4,000 of stock?

A. It was reported by Mr. Wellhoener that he had taken it and given a check for $1,000, and before they could get to the bank with it he refused to pay it and I believe he gave him up the check again.

Q. Upon what stock was that $1,000 check paid in by Capt. Wharton to the secretary?

A. It was paid on the stock of Ozias Townsend.

Q. Then Ozias Townsend had made a bargain with Mr. Wharton to take some of that stock?

A. I don't know anything about that.

Q. What was the $1,000 check paid in on?

A. That I could not tell you, only the $1,000 was on his stock.

Q. That was part of the 393 shares, was it? It would come out of the 393 shares?

A. I don't know anything about what arrangements he had with him.

329 Q. Did you talk to Mr. Wharton about it?

A. I don't think I ever spoke to him on the subject.

Q. That $1,000 check was paid to the secretary of the corporation, was it not?

A. That is what he told me.

Q. It was not paid to Mr. Townsend?

A. I don't know only what the secretary told me, or the treasurer, I should have said.

Q. What became of that $1,000, then?

A. He told me that the man came and demanded it back before banking hours, and he gave it up to him. The way that I understand it he said that he would not pay it.

Q. Why?

A. I don't know.

Q. The secretary gave it back?

A. I don't know; he said he did; that is all I know about it.

Q. Did the directors at a meeting held at East St. Louis hotel, in East St. Louis, Illinois, in February, 1878, pass 3 resolutions by which they allowed Ozias Townsend $10,000 for the services which he had rendered in organizing the corporation and also in securing certain mining rights to the corporation, all in stock, if he desired it?

A. I was not at that meeting; if I had been I would have objected to it very strongly.

Q. Is that the meeting at which True W. Blackman was elected director?

A. Yes, sir.

Q. Did you know anything about how the board of directors came to pass those resolutions?

A. I did not.

330 Q. Were you notified of the holding of that meeting?

A. I think not. I don't think I had any notice of it.

Q. Are you sure that you were not notified?

A. I attended most of the meetings.

Q. The question is whether you were notified to attend this meeting.

A. My recollection is that I did not.

Q. How soon after the adoption of those resolutions did you find out about them?

A. At the next meeting.

Q. How soon was that?

A. I don't remember now. I went to the secretary pretty strong about it; told him that he would break the company, and that he had no rights to dispose of the stock in that way.

Q. Do you know what time the plaintiff commenced working to organize this corporation?

A. He said it was organized when he first came over there; that the company was already organized.

Q. When was it that he first went over there?

A. It must have been in November, I think.

Q. When did you first meet him?

A. I think the first time I met Mr. Townsend he came from Centralia and had some coal that he was going to bring to St. Louis here and exhibit it.

Q. Where had he got the coal?

A. I think at Centralia.

Q. Was there a shaft open at Centralia at that time?

A. Yes, sir.

Q. He was going to bring it to St. Louis and exhibit it as a specimen of coal in that locality?

A. That was what I understood him.

331 Q. Did he speak about having examined the geological survey of the State?

A. Not that I recollect of. I don't think that he said very much at that time, the first time.

Q. It was simply that he had some coal that had been taken out of the mine at Centralia?

A. Yes, sir.

Q. Did he give it as his opinion that the same vein extended to Sandoval?

A. I don't think that he expressed any opinion about it.

Q. Did he talk then in reference to the projected organization of this corporation?

A. No, sir.

Q. That was before the mining rights were secured, was it?

A. He said it was already made up and if we would secure those mining rights he would sink the shaft.

Q. He meant to give your influence only?

A. I cannot tell what he meant, but just as he spoke it.

Q. If you folks would go to work and help secure mining rights?

A. He said if we would go on and secure the mining rights he would sink the shaft.

Q. Did he go around and help secure them?

A. He may have ridden around with Esq. Roll to pass away the time; I don't know about that.

Q. Was he talking to you all alone at that time or was he talking to a number of the citizens of Sandoval?

A. We had a meeting there and he talked to a number of us.

Q. Up at the school-house?

A. Yes, sir.

332 Q. Who called that meeting?

A. I don't know; I guess some of the citizens called it. He was there and we called the meeting.

Q. Did he make a speech at the meeting?

A. Mr. Townsend is not very much of a speech-maker. I don't know whether he talked or not, but the citizens talked a good deal. Dr. Edwards and others made speeches.

Q. They made speeches in favor of organizing the corporation?

A. Recollect that was already organized.

Q. What was the purport of the speeches made at that meeting?

A. To go to work and secure the royalty.

Q. The citizens attending that meeting were in favor of granting rights to Capt. Townsend, were you, for the benefit of the corporation?

A. For the benefit of Mr. Townsend if he would sink the shaft within the time. We wanted the mine. I don't think it would improve our land any, and mining rights are not worth much unless you get down to coal.

Q. About what was the date of holding that meeting?

A. I think it must have been some time in November; perhaps about the middle of November or before the latter part of November; I would not be certain.

Q. That is when you think that meeting was held?

A. Yes, sir.

Q. If the corporation was organized at that time, as you say he represented, why were the mining rights taken to him in trust for the corporation?

A. That I could not tell you.

Q. Did you not know that the corporation was not organized at that time?

333 A. He said it was, and I did not dispute his word.

Q. You knew very soon after that it was not organized?

A. I knew it when we came over here and saw the stock book. That is the first I knew of it.

Q. Did you know on the 8th of December, 1877, that the corporation was not organized until that date?

A. When I saw the book.

Q. Had you subscribed to the capital stock of $50,000?

A. Yes, sir; I took 5 shares.

Q. When was it that you made the subscription?

A. A short time before we were notified to come out here.

Q. When you made that subscription did you know that you were subscribing to the organization of a company not yet organized?

A. He said that it was.

Q. What did you suppose?

A. That he was telling the truth.

Q. What did you think you were doing—that you were subscribing 5 shares to a corporation that was to be organized?

A. I suppose I took that much of his stock.

Q. Are you not mistaken about your supposition? Did he not

represent that you were taking that much of the original capital stock when you subscribed the 5 shares?

A. If the thing was already formed how could I?

Q. You had seen enough to know it was not formed?

A. I supposed he was telling the truth.

Q. When you subscribed the 5 shares you knew it was not organized?

A. That is the first company I ever went into and did not know but very little about it.

Q. He did not show you any organization papers?

334 A. No, sir.

Q. He simply asked you to subscribe 5 shares to the capital stock of a company to be organized?

A. No, sir; he said it was organized.

Q. Did you not know that it was not organized?

A. I took his word for what he said.

Q. You were a justice of the peace, or had been?

A. No, sir.

Q. Were you not a justice of the peace?

A. No, sir; I am a high private.

Q. When he said the company was already organized did he give you the names of the directors or officers of the corporation?

A. No, sir.

Q. You knew that it had to have directors, a president, and secretary in the meetings?

A. I did not know anything about it, for I had never been in a corporation before.

Q. I asked you the question whether you did or not.

A. No, sir.

Q. You found out very soon afterwards that the company was not organized?

A. Since I came to St. Louis I did.

Q. You were elected a director on the strength of your stock subscribed?

A. Yes, sir.

Q. You knew then that the company was organized?

A. Yes, sir.

Q. You attended regularly all the meetings of the board of directors commencing with December 8th, 1877, until the 29th of April, 1878?

335 A. 2nd of May, I think.

Q. The plaintiff, after the organization of the corporation in December, 1877, acted as president and performed the duties of president and *ex officio* superintendent from that time until the 2nd day of May, 1878, according to your examination-in-chief?

A. Yes, sir.

Q. Did he not do everything that was incumbent upon him as president and *ex officio* superintendent of the corporation from the date that you elected him until the 2nd of May, 1878?

A. No, sir; I don't think he did.

Q. In what respect was he short of performing his duty?

A. He did nothing more than act as chairman of our meetings. He never purchased anything that I know of, and we went into the contract with Frank Seymour to sink the shaft?

Q. He signed the contract as president, did he?

A. I expect he did.

Q. Was there anything that was necessary for the president and *ex officio* superintendent to do that he did not do?

A. Yes, sir.

Q. Specify it.

A. To go right forward and hire men and sink the shaft.

Q. He did that by making a contract with Mr. Seymour?

A. No, sir; that was some little time before he did that.

Q. The record shows that at the very inception of the corporation you talked with Mr. Seymour.

A. No, sir; it was some little time after. I don't think we had a talk with Mr. Seymour only at one meeting. He came to one of the meetings and made a proposition to the company.

Q. You mean that the negotiations that he had with Mr.
336 Seymour were ratified by the corporation afterwards?

A. I don't know that he had any negotiations with him.

Q. I am asking you if in a meeting of the directors he did not state that Mr. Seymour would sink the shaft under certain terms.

A. He put in a proposition that he would sink it for $18.00 a foot.

Q. He had negotiated it and let Mr. Seymour make this proposition to the board of directors?

A. Not to my knowledge.

Q. You don't know that he did not have such negotiations?

A. No, sir; I don't know what a man does when I am not with him.

Q. You did not know what Mr. Townsend was doing in the meantime?

A. Of course I did not.

Q. I asked you to specify wherein he failed to perform his duty as president and *ex officio* superintendent after he was elected.

A. By not going right ahead and having the shaft go on, and he also said that he had a contract with Smith, Beggs & Co. for an engine and boiler. He came out there and said, "That is all right; it will be here in a few days." Then Mr. Seymour came here and went to Smith, Beggs & Rankin and those fellows said they never saw Mr. Townsend.

Q. Do you say that his services as president and *ex officio* superintendent from the time he was elected until the 2nd day of May, 1878, were worth nothing at all?

A. As a fact I don't think it was, because there was nothing done and he run us badly in debt.

Q. Did he not do everything that was necessary to be done?

A. No, sir.

Q. Could he do anything in advance of the sinking of the shaft that he did not do?

337 A. Yes, sir.

Q. What?

A. He could have paid his assessments as a stockholder and gone right on.

Q. That was no part of the duties of president, was it?

A. As a stockholder and as a gentleman, I think it was.

Q. Do you know how much money he paid B. Gratz Brown for services in getting up the incorporation papers?

A. He told me that he paid him $500 out of his own pocket.

Q. Where and when did he tell you that?

A. Before we gave this note for $200. He said that he paid him $500 out of his own pocket, and that the company ought to give him $200.00. It was here near Gratz Brown's office. I don't know just where that is, but we met there in one of his rooms somewhere down this way (indicating). I could not tell you where it is. I could not tell you the time, but it was about the time that the thing was first started after the company was organized.

Q. Who was present when he made that representation to you that he paid $500.00 to B. Gratz Brown?

A. I could not tell; 2 or 3; I think Mr. Wellhoener was there, but I could not be certain.

Q. Do you know how much he did actually pay B. Gratz Brown?

A. I don't know that he ever paid him anything.

Q. You don't know that he did not pay him?

A. Yes, sir; he did not pay the note. I went and looked at the records, and they got judgment against us for $228 and some cents and $9 and something costs, and we had it to pay.

Q. Who paid that?

A. I paid my quota and the rest of the stockholders. We paid it.

338 Q. Was that debt paid by the new corporation?

A. No, sir; they did not have anything outside only what the hole and the thing cost there. That was outside work.

Q. When was it that you paid your share to B. Gratz Brown?

A. (Witness refers to memorandum.) $228.33 was the judgment, and costs $9.25; paid February 14th, 1879.

Q. How much was paid B. Gratz Brown on this judgment?

A. That satisfied the claim.

Q. I want the exact amount of money. I understand it was compromised.

A. It was just like a bad debt. His name was on it as president.

Q. How much did they pay B. Gratz Brown? It was compromised at some sum less than the judgment?

A. I don't know. I paid about $60.00.

Q. Who else paid?

A. All of us. We divided it up. Mr. Roll paid and Mr. Nolan, I think; all paid; 5 or 6 of us over there.

Q. Who paid B. Gratz Brown the money—which one of you?

A. They paid it to his attorney.

Q. Who was his attorney?

A. Mr. Jennings, prosecuting attorney of our county.

Q. And you cannot tell how much was paid on it?

A. No, sir.
Q. It was compromised?
A. Yes, sir.
Q. You don't remember at how much?
A. No, sir; I do not.
Q. How much did you pay?
A. I paid about $60.00.
Q. On this judgment?
339 A. Yes, sir.
Q. Why did you pay so much as that?
A. Because they claimed that I had more stock than any of the rest of them.
Q. Was it not compromised at $100 even?
A. No, sir; it was more than that, and there is no credit on the judgment there. The note is $200, drawn at 60 days.
Q. Had not Mr. Townsend before that paid $100.00 to B. Gratz Brown on his claim?
A. He did not show any record of anything of that kind.
Q. You don't know, then, how much Mr. Townsend paid B. Gratz Brown on that claim?
A. I only know that the note was $200 and the judgment was 228 and some cents.
Q. How much was Mr. Brown's claim for his whole services?
A. $200.00; Mr. Townsend bought it in; he said that he had paid $500 before that.
Q. That was the balance, then, according to the way you understood it?
A. I think $200.00 was a big price for getting up a corporation of that kind.
Q. The question is how much Mr. Brown claimed for his whole claim.
A. I don't know anything about that.
Q. You know Mr. Townsend never rendered any services in securing these mining rights that you know anything about?
A. Of course I don't know anything about — I don't know.
Q. Repeated.
A. I think not, for I was very well acquainted there.
Q. You were not with him all the time he was out there?
A. No, sir.
Q. How do you know what he was doing when you were away from him?
340 A. I could not tell what he was doing when I was away from him.
Q. Did you ever get any of those mining rights?
A. Yes, sir; in connection with Mr. Nolan.
Q. Mr. Nolan was station agent and had his duties to perform and could not get away from his office very much?
A. We got 80 acres from Mr. Ewing, the first man we asked.
Q. Who else did you get?
A. My own.
Q. That was no trouble.

A. No, sir; that was just like breaking this company up.

Q. Is there anybody else you got?

A. I don't recollect; but I recollect about Mr. Ewing very distinctly, for we encouraged him very much.

Q. That is all you can specify?

A. And he had some lots that he gave in.

Q. Specify *w*he names.

A. I don't know as I could, sir.

Q. Then I take it for granted that that is all you got?

A. I do not take it for granted.

Q. Why not specify?

A. I don't remember now.

Q. Look at Exhibit "E" to the deposition of Ozias Townsend and state whether or not you ever saw that before (handing paper to witness).

A. No, sir; I don't think I ever did.

Q. You did not have anything to do with getting that up, did you?

A. Yes, sir; I did, if that is it. If this is the deed, of course I gave royalty in my lots.

Q. That is, you mean you signed it?

A. Yes, sir.

341 Q. Look at Exhibit "F" to Mr. Townsend's deposition. What did you do towards getting that up?

A. I don't know, but Mr. Ewing lived right there by me, and Mr. Rockwell was right there by me, and I think they would have given it to me without any hesitation.

Q. You had nothing to do with getting their mining rights?

A. In all probability I did with Mr. Rockwell.

Q. Mr. Rockwell was a stockholder and was willing to do anything he could?

A. He did not have so much stock.

Q. He was interested in the corporation and wanted to make it a success?

A. Of course we did all we could to make it a success.

Q. Those parties did as much as you in securing these mining rights?

A. No, sir. As I have stated before, we divided up the town. We had a railroad crossing there and we took different days in different parts of town to work. Mr. Rockwell lived a little out in the country, on my side of the town.

Q. You had your district, then, had yo*u*?

A. Yes, sir.

Q. Did these men live in your district also, the men specified in those deeds?

A. Yes, sir; Mr. Edwards and Mr. Rockwell and Mr. Ewing and others. Yes, sir; they all lived there in our side.

Q. The plaintiff paid the legal fees, did he?

A. I don't know about that. I was promised $1.00 and did not get it. We had to do that to make it good in our State.

Q. You did not pay any fees?

A. No, sir; I did not pay any fees.

342 Q. You were present when the code of by-laws were adopted, were you not?

A. I think I was.

Q. Look at Exhibit "B" to the deposition of Henry Wellhoener and state whether that is a copy of the by-laws adopted by the directors.

A. I don't know as I can tell, Judge. I think that was, Judge.

Q. You were present when the by-laws were adopted, were you not?

A. I think so.

Q. The minutes of the directors show that?

A. Yes, sir.

Q. You helped to adopt these by-laws, did you?

A. Yes, sir.

Q. I will ask you if the plaintiff, as president of the corporation, called a meeting of the board of directors to be held in the city of St. Louis on the 2nd of May, 1878; and, if so, whether you got any notice of that meeting.

A. I don't recollect, Judge.

Q. Were you not in the city of St. Louis on the 2nd day of May, 1878, you and Dr. Edwards?

A. I may have been. I think I was at that meeting. I believe I was at that meeting.

Q. In the city of St. Louis?

A. No, sir; in East St. Louis.

Q. I am asking you about a meeting in the city of St. Louis on the 2nd day of May, 1878.

A. If I was present I have forgotten it.

Q. Were you here on that day?

A. I think I was.

343 Q. Was that the day you got the seal and books?

A. I don't recollect. That is the time that I came to examine the records to see if we could find any property to make the men pay up and go ahead and sink the shaft.

Q. Was that not the 2nd day of May, 1878?

A. Yes, sir.

Q. Did you stay here all night on the 1st of May?

A. No, sir.

Q. When did you get into St. Louis?

A. In the morning of the same day.

Q. Of the 2nd of May?

A. Yes, sir.

Q. Was that the day you got the seal of the corporation and the books?

A. No, sir.

Q. What day did you get the seal and the books?

A. The day we came down to examine the records to see if we could prosecute.

Q. You did not attend that meeting on the 2nd day of May, 1878, in the city of St. Louis?

A. No, sir; I did not attend.

Q. Why did you not attend?

A. Because he was not a legally authorized man; had no stock. I did not attend.

Q. He was not president, then?

A. No, sir.

Q. You held a meeting at East St. Louis, did you?

A. Yes, sir.

Q. Who was present at that meeting?

344 A. I think Mr. Blackman, Mr. Wellhoener, and myself. I don't recollect who else was present; Mr. Mears, I think. They were all stra-gers to me.

Q. The plaintiff was not present at the meeting at East St. Louis, was he?

A. I did not see him.

Q. Don't you know he was not there?

A. I did not see him at the meeting.

Q. He was not there, then, was he?

A. I suppose I would have seen him if he had been there.

Q. Why can't you answer it straight?

A. Is not that straight?

Q. You can answer whether he was there or was not there?

A. I did not see him.

Q. It is a fact that he was there or was not there.

A. To the best of my knowledge, he was not there.

Q. Who called the meeting at East St. Louis?

A. Several; Mr. Wellhoener and those other parties; Mr. Blackman and those other parties.

Q. In what way did they call it?

A. I could not tell you now. I think it was in Mr. Wellhoener's how the thing started. I forget not how they called it.

Q. Why did you not hold that meeting at Mr. Wellcoener's office, then, while you were there?

A. I think they elected a new officer then. They elected another director, I think.

Q. Where?

A. Over in East St. Louis.

Q. I asked you why you did not hold your meeting at Mr. Wellhoener's office in St. Louis when you were there.

345 A. We thought it would not be legal. We have to go to East St. Louis.

Q. Do you think that was a legal m*y*eting on the 2nd day of May, 1878, in East St. Louis?

A. As legal as any of the rest of them.

Q. Do you know what the by-laws require about holding meetings?

A. Yes, sir.

Q. To get a special meeting up they require a call of 3 directors—a written request—or upon the notification of the president of the corporation?

A. It may have been 3 of the directors made the request. I could not say as to that.

Q. Three directors had to make a written request upon the president before a meeting could be held?

A. According to the stock book he was not president.

Q. The first section of article 4 of the by-laws, amongst other things, reads as follows: "The president shall order special meetings of the board of directors at his option or when required so to do in writing by three of the directors." Now, your special meeting held at East St. Louis on the 2nd of May, 1878, was that meeting called by the president of the corporation or not?

A. I could not say.

Q. Did Mr. Townsend call that meeting at that place and at that time?

A. I forget.

Q. Don't you know that he did not do it?

A. No, sir. If I had known it I would have said so.

Q. You were present at that meeting?

A. Yes, sir.

Q. Don't you know all about that meeting, how that meeting came to be held at that time and place?

346 A. I don't know as I can tell you that, but they claimed then that Mr. Townsend was no stockholder and therefore was not president and had no authority to act.

Q. He had not been deposed by any resolution of the board of directors?

A. But that was what was reported to me by the secretary of the company.

Q. You kept him out of the office by the simple word of the secretary and not by the action of the board of directors? You had to have a legal meeting of the board of directors before you could act?

Defendant's counsel objected to the question, as to whether it was legal or illegal, as a question for the court to determine.

A. I could not say whether it was legal action of the board or not.

Q. Under what authority did you directors that were present at East St. Louis on the 2nd of May, 1878, get together there?

A. I went over on authority of Mr. Wellhoener and Mr. Blackman, and it seems to me that somebody else, but I have forgotten. I believe Mr. Blackman was his name—True W. Blackman.

Q. You went from the city of St. Louis over there from Mr. Wellhoener's office?

A. Yes, sir.

Q. Why did you not hold the meeting at Mr. Wellhoener's office?

A. They said it would not be legal—Mr. Wellhoener and Mr. Blackman said so.

Q. By going to East St. Louis and holding a meeting without a call of the president did they consider it legal?

A. Yes, sir; that meeting was called.

347 Q. In what way did they make the call?

A. I don't recollect how it was.

Q. They did not have the president's sanction to it?

A. No, sir; they said he was not president because he had no stock, and a man could not hold an office unless he had stock.

Q. He had never been deposed as president by the board of directors prior to that time?

A. No, sir; that is the first meeting I was at that it was brought up.

Q. When was it that you got the books and seal?

A. I think it must have been about the last of June or the 1st of July when we came over there to see if we could get something in order that the enterprise might go on; we wanted to sink the shaft if we could find property.

Q. From whom did you get the seal of the corporation and the books?

A. Mr. Wellhoener went out a while, went into the next room, and his son-in-law came in and told me that there is a package that Mr. Wellhoener wanted me to take home with me.

Q. What did you suppose you had got in that package from Mr. Wellhoener's son-in-law?

A. I supposed it was the books, although I did not see them.

Q. Was that a scheme so that you would get the books and the seal?

A. I could not tell you what the scheme was.

Q. When you took the seal and the books with you did you come here expressly to get them?

A. No, sir; we came here to see if we could find property that we could make those men pay their assessments, that the enterprise might go on.

Q. Who was with you at that time?

A. Dr. Edwards was over here.

348 Q. Anybody else?

A. No, sir.

Q. Was Mr. Seymour along?

A. No, sir.

Q. You had not inaugurated the suit, had you, then?

A. No, sir.

Q. How soon after that did you inaugurate the suit?

A. As soon as we went back, found that they had nothing, we went back to throw the thing into bankruptcy.

Q. Were you the main man in getting the consent of the stockholders over there to join in the suit with you for that purpose?

A. I took an active part, sir.

Q. Who was it that thought of the idea of throwing the company in bankruptcy?

A. I don't know his name; he was adjutant general of the State.

Q. He suggested that idea to you?

A. Yes, sir.

Q. How did you come to consult him?

A. We wanted to see if we could collect anything from these men.

Q. Who was with you?

A. Dr. Edwards.

Q. Who else?

A. Mr. Blackman and Mr. Wellhoener may have been along; they were in there at the court-house to examine the books; they went in there afterwards.

Q. You acted on his suggestion, did you?

A. Yes, sir.

Q. You went to work and employed counsel at Salem to throw the company into bankruptcy?

349 A. Yes, sir.

Q. You were determined, then, to crush Mr. Townsend out of the corporation?

A. Yes, sir; we were bound to throw the whole thing out, the company out, and, of course, he was one of the company and would have to go out with the rest.

Q. And you did it by means of that suit you brought?

A. Yes, sir.

Q. That was the suit of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois?

A. Yes, sir.

Q. You were satisfied, then, that your meeting held at East St. Louis on the 2nd day of May, 1878, was not a legal meeting and that the proceedings taken at that meeting were null and void?

A. No, sir; I supposed they were good.

Q. Did your counsel tell you that you could not hold a legal meeting in the manner in which you held that meeting?

A. We did not ask him anything about that.

Q. Is that a copy of the letter you wrote to Mr. Townsend after you went home (handing copy of letter to witness)?

A. I can tell you whether it is my handwriting or not if you get the original letter. I have nothing to say against it for I wanted the enterprise to go on and did all I could to have it go on.

Copy of letter here referred to marked Exhibit "H" to the deposition of Isaac Main and hereto attached.

Q. There are 436 mining rights taken from different persons to Ozias Townsend in trust for the St. Louis & Sandoval Coal

350 & Mining Company before the company was organized; did you not think it was of value to the corporation for Mr. Townsend to convey the mining rights to the corporation after its organization?

A. Yes, sir.

Q. The directors never pretended to hold any meetings after the 2nd day of May, 1878, did they?

A. Not to my knowledge.

Q. Was there not a new board of directors elected after the board of which you spoke had been elected?

A. Only to fill vacancies, and then they elected Mr. Wharton, I believe, as president.

Q. That was before the 2nd of May, 1878, was it?

A. Yes, sir.

Q. Was there not a new board of directors elected after the board of which you spoke had been elected?

A. Not excepting this one man, Mr. Blackman, that I recollect of.

Q. You never paid but the first call of 5 per cent. on the stock subscribed by you, did you?

A. Yes, sir; I had to make up $75.00 that was short. Mr. Wellhoener came over, and did not have money enough and wanted to make it up, and I had to advance $75.00.

Q. On what call was that paid?

A. There was but one call.

Q. How much did you pay on that call?

A. $75.00.

Q. How many shares did you have?

A. 10 shares.

Q. You paid $75.00 all told?

A. That is on the assessment.

351 Q. Is the $75.00 all you claim to have ever paid on your stock to the old corporation?

A. Yes, sir; that is all.

Q. You were the main man in getting up this suit of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois?

A. Yes, sir; I took an active part.

Q. You consulted counsel and employed counsel and managed the suit generally, did you?

A. Dr. Edwards and Mr. Seymour were the principal men; these others all came in.

Q. The consideration paid to Mr. Ewing for the 2 acres of ground upon which the shaft was sunk—who paid that $200.00?

A. I did.

Q. Did not Mr. Townsend pay it?

A. Mr. Townsend never paid anything that I know of.

Q. Did you pay it with your own hand to Mr. Ewing?

A. Yes, sir.

Q. Now state when you paid it to Mr. Ewing.

A. It was a little before and about the time we paid the assessment there; at that time Mr. Ewing came around and I went there to his house and paid him.

Q. Don't you know that Mr. Townsend furnished the money or the greater part of it to Mr. Wellhoener and then Mr. Wellhoener paid that $200.00 to Mr. Ewing?

A. No, sir.

Q. This account you put in a little while ago shows that other parties paid that money besides yourself?

A. No, sir; I paid it.

Q. It shows $100 paid by Mr. Wellhoener in January, 1878,

352 and that a note was executed to Samuel Ewing, due on the 15th day of February, 1878, for the other $100. Here he credits you with $36.00 paid on the $100 note to Samuel Ewing and

takes credit for $64.00 balance on the note himself. Now, do you contradict the account as put in this book?

A. Yes, sir; so far as that is concerned, I do.

Q. You claim to have paid all of that $200 yourself?

A. Yes, sir.

Q. The account don't show so.

A. I don't know how that reads.

Q. Are you not mistaken in saying that you paid more than $36.00 on the $200 paid to Samuel Ewing for the land?

A. I think not.

Not being able to complete the taking of said deposition on this day, I adjourn the further taking of the same till tomorrow, then to be continued at the same place and between the same hours as authorized by the commission to myself as special examiner.

C. C. COWEN,
Special Examiner.

Pursuant to adjournment, as above stated, on the 27th day of December, 1888, I continued the taking of said depositions at the place and between the hours authorized by the commission to myself as special examiner.

Present: James Carr, Esq., for the plaintiff, and M. Schaeffer, Esq., for the defendants.

The said ISAAC MAIN, being called for further examination, testifies as follows:

Direct examination (continued).

By Mr. CARR:

353 Q. In your examination-in-chief you testified concerning the representations made by Mr. Townsend that the stock had all been taken before you subscribed for any stock. Did you testify in regard to that in the case of Francis H. Edwards & others against The St. Louis & Sandoval Coal & Mining Company & others in the circuit court of Marion county, Illinois?

A. I suppose I did; that was the same case.

Q. What is your recollection now?

A. My recollection is, as I stated yesterday, that he represented that to us there.

Q. Here is your testimony; I would like to have you testify in regard to that. (Former testimony of the witness handed him.) "Mr. Townsend came out there to Sandoval and said that the stock was all taken and the money in hand ready." That is what you testified before, is it?

A. Yes, sir.

Q. Is that all you testified in regard to it before?

A. I cannot recollect

Q. You do not recollect of testifying anything else in regard to that point, do you, on the other trial?

A. I do not.

Q. I will ask you if at that trial you did not use these words, speaking of the services rendered by Mr. Townsend to the corporation: "He rendered no services to the company except as president and superintendent."

A. I may have said that, sir.

Q. You do not claim that that is improperly reported, do you?

A. No, sir.

Q. When you used those words you did not state anything then in regard to the pecuniary value of his services as president
354 and *ex officio* superintendent to the company, did you?

A. I don't know as I did.

Q. Referring to the stock held by Mr. Townsend in the corporation, you are reported as using these words: "We got rid of the $39,000 in stock by going into bankruptcy; I believe I thought of this myself." Is that correctly reported?

A. It has been so long ago; I expect it is correct, sir.

Q. You think it is correctly reported, do you?

A. Yes, sir; I suppose so.

Q. You say "you thought of this way"—that is, to put the company into bankruptcy, as you state yourself. Did you not do that for the purpose of preventing Mr. Townsend from availing himself in any way of the $10,000 in stock that he had been voted by the directors at a special meeting held at east St. Louis?

A. That was one cause.

Q. And did you not intend to prevent him from recovering either that stock or the value thereof or for his services rendered and the money laid out and expended for the use and benefit of the corporation?

A. We did to a great measure, as we did not consider that he was entitled to that stock to give away.

Q. What has become of the stock book, together with the certificate book, of the corporation? I see you admit that you had them in your possession the last heard of them.

A. I don't know, sir.

Q. Did you loose them?

A. No, sir; I don't suppose I lost them; I don't recollect of ever seeing them.

Q. They were in the package that you received from Mr. Wellhoener's son-in-law, were they?

355 A. Not that I know of, for I looked afterwards and I only found that; I could not find it.

Q. In your examination-in-chief in the trial of the case alluded to you used these words: "Yes; we had a certificate book. I don't know what became of it. I had it in my possession, but I don't know what has become of it; I cannot find it and have searched everywhere for it. There was some paid-up stock in the book to Mr. Wharton. I think there was $10,000 of paid-up stock; yes, I think that was it—$4,000 of paid-up stock, and he was to take $10,000 of unpaid stock." Was that correctly reported?

A. I could not say it was not.

Q. Do you believe it was correctly reported?

A. As far as the stock book being in my possession I don't recollect.

Q. Do you remember of having that in your possession?

A. No, sir; I don't recollect.

Q. Did you get it in the package with the other books and seal?

A. Not that I know of; I don't recollect of seeing it.

Q. You admit here that it had been in your possession. You say, "I had it in my possession, but I don't know what had become of it." Did you have it in your possession?

A. It is my impression that I did not have it. If it was I could not find it. What has become of it I don't know.

Q. When you said "I had it in my possession" in your testimony in the other trial did you state the fact correctly then or not?

A. I could not tell it now, sir.

Q. Why can't you state it now?

A. I don't recollect of seeing or having it: that is just the reason.

Q. Did you have it in your possession at the time stated here or do you now state that you never had it in your possession?

356 A. I don't recollect of seeing it in that package.

Q. Did you not take the books out of the possession of the secretary, Mr. Wellhoener, for the purpose of preventing Mr. Townsend from selling the $10,000 of unpaid stock to Mr. Wharton?

A. No, sir; I did not. Mr. Wellhoener, as I have stated before, went into the other room and was gone awhile, and his son-in-law came and said, Here is a package that Mr. Wellhoener wants you to take home. I took it and walked off, and that book may have been in there.

Q. Was not that one of the purposes for which you took the books and seal away, so that the certificates could not be issued to Mr. Wharton?

A. No, sir. The letter that he produced here yesterday as evidence in the case, did not that urge him to pay up, so that the case could go on? I think it was very good on my side of the question to show that we were in earnest.

Q. You testified about the books being in the possession of Mr. Goodenow for the purpose of drawing the bill in your case. Is that the fact that you did that?

A. Yes, sir; he got the books.

Q. You were the main man in instigating and carrying on that suit?

A. Yes, sir; I knew more about it than any one ther-, for I had been in th- company as a director.

Q. You were apprehensive that Mr. Townsend, after you declared his $10,000 worth of stock not valid, would come at the company in some way in regard to that?

A. We saw that he was ruining the company——

Q. Answer my question as I put it. (Question repeated.)

A. Yes, sir.

Q. Were you at the sale on the 28th day of September, 1878, by George W. Herrod as receiver?

357 A. Yes, sir.

Q. How many of the plaintiffs in that suit were at the sale?

A. I don't recollect; 3 or 4, I think.

Q. Can you name them?

A. I think Dr. Edwards was there and Mr. Nolan. I don't recollect whether any one else was there or not.

Q. Was Mr. Wellhoener there?

A. I don't know; I am not positive.

Q. Any of the others there? Was Mr. Reinhardt there?

A. I hardly think he was; he may have been; there was a crowd of people and I would not be positive who was there.

Q. Was Mr. Rockwell there?

A. Not that I recollect of.

Q. He was alive then, was he?

A. Yes, sir.

Q. How many bids were made at that sale?

A. 3, I think.

Q. Who bid first?

A. I bid first.

Q. How much did you bid?

A. I bid $150.00.

Q. Who bid next?

A. Esq. Roll.

Q. How much did he bid?

A. $175.00.

Q. And the property was knocked down to you at $200.00.

A. Yes, sir.

Q. How soon after that sale did you organize the new corporation?

A. I think it must have been over a month before we got the stock taken; then we went and got the preliminaries for organizing.

358 Q. License for organizing?

A. Yes, sir.

Q. What was the date of that license?

A. I don't recollect.

Q. Is there any way that you can fix the exact date?

A. No, sir; but if I had known it I could have taken the date before I came over here; they were soliciting stock.

Q. What was the agreement amongst the plaintiffs in the suit in regard to buying in the property; that you should buy it in for them?

A. No, sir; I bought it in for myself individually, as I was trying to protect myself as much as I could to cover the debt which was hanging over it.

Q. Who got up the scheme to organize the new corporation and take the property off your hands?

A. I was about the head man of it.

Q. And you carried the scheme out successfully by getting the

new corporation duly organized under the laws of the State of Illinois?

A. Yes, sir.

Q. And it is in operation yet?

A. Yes, sir.

Q. And you are a director in it now?

A. No, sir; I have no stock in it.

Q. How long did you continue a stockholder and director in it?

A. I was 2 or 3 years in it. I would not be certain as to the time.

Q. When you organized this new corporation did you speak of Mr. Townsend's claims against the old corporation?

A. No, sir.

Q. Were they not spoken of by anybody?

359 A. No, sir; not mentioned at all by any one that I know of. I did not mention it. When we had a meeting, as the minutes show, we tried to get Mr. Townsend to state the amount of his bill against the company and he would not do it.

Q. Which meeting do you allude to—the date of it?

A. (Witness refers to book.) It was March 4th, 1878; that was the meeting held by the old company when we adjusted our claims.

Q. You were not at that meeting, according to the minutes, were you?

A. Yes, sir; I think I was at that meeting.

Q. Your name is not here?

A. Isn't it?

Q. No, sir.

A. (Witness refers to book again.) I do not see how they got my bill in there unless I was there. I know I insisted upon Mr. Townsend stating the amount of his bill. I recollect that very distinctly.

Q. These minutes have *these* words: "Bill of Ozias Townsend, amounting"?

A. Yes, sir; but he did not give any amount, and I insisted he should do it so we could tell what we were doing.

Q. Do you swear that you were at that meeting?

A. Yes, sir; I was at that meeting. I recollect very distinctly of urging Mr. Townsend——

Q. The book, then, is not correct in not having your name?

A. According to my judgment, to the best of my judgment, I was there. I think Mr. Townsend recollects the circumstances.

Q. Then you say you were present at that meeting and you insisted upon Mr. Townsend stating the amount of his claim?

A. Yes, sir.

Q. And did he refuse to do it?

A. He did not do it.

360 Q. And you did not know how much the claim was?

A. No, sir.

Q. You knew that he had a claim?

A. I did not know that he had one whatever, but if he had we

wanted to know what it was so we would know what we were doing as a company.

Q. Did he profess to have a claim against the corporation?

A. That is all that he said, just what is there.

Q. He did not name the amount?

A. No, sir.

Q. And when you ascertained the amount of his claim you thought it was too big?

A. I never ascertained the amount of his claim until after the meeting.

Q. After the passage of the resolution at East St. Louis?

A. Yes, sir; that is the first I saw.

Q. And you thought then that the allowance was too much?

A. Yes, sir; don't you?

Q. The 436 mining rights conveyed to the plaintiff for the use and benefit of the old corporation are now being used by the new corporation, are they not?

A. Yes, sir; I suppose so; they are working right away. I have not been along to know where they are working, but they are still hoisting coal there.

Q. Have they passed beyond the limits of the 2 acres where the shaft was sunk?

A. Yes, sir.

Q. When they got out of the 2 acres they got onto some of the mining rights that were granted to Mr. Townsend, did they not?

A. I suppose they did. Mr. Townsend he never had the
361 right of the streets or alleys.

Redirect examination by Mr. SCHAEFFER:

Q. How long after your meeting on May 2nd, 1878, was it that you took the package of books from Mr. Wellhoener's place of business to Sandoval, Illinois?

A. It must have been about the last of June or the 1st of July; somewhere not far from that.

Q. Do you know what, if any, mining rights the new company have secured after its purchase from you?

A. The streets and alleys, and they bought 2 lots of me.

Q. Do you know of any other?

A. Not personally—that is, I knew that they got 5 acres of the manufacturing company; the Sandoval Manufacturing Company is the name of it.

Plaintiff's counsel objected to both the question and the answer last above given on the ground that they are irrelevant and incompetent.

Q. Do you know whether they are now working on the rights that they have bought from you or on the rights that they have bought from other parties since that time?

A. I do not.

Recross-examination by Mr. CARR:

Q. How much did you get from the new corporation for the property bought by you at the receiver's sale and conveyed to the new corporation?

A. Somewhere about $2,400.00.

362 Q. No more?

A. I think not; somewhere not far from that; I would not be positive; I have no record of it, but it is somewhere not far from that.

2nd redirect examination by Mr. SCHAEFFER:

Q. What was done with the money that you got from the new company?

A. It was used in paying off the debts arising from sinking the shaft.

Signature waived by agreement of counsel.

Recess was here taken till 3 o'clock p. m.

After Recess.

Stipulation and admission of the solicitors, both for the plaintiff and defendants, admitted in evidence and marked Exhibit "J" and hereto attached.

Defendants introduced petition of Ozias Townsend and others to be allowed to defend in the Edwards suit in the circuit court of Marion county, Illinois, and the decree of the February term, 1881, rendered in said cause, and same is marked Exhibit "K" and hereto attached.

I, the undersigned, special examiner of the circuit court of the United States for the southern district of Illinois, do certify that the foregoing depositions of John B. Mears, Henry Wellhoener, Charles B. Gartside, Ozias Townsend, Lambert Nolan, Charles Reinhardt, James S. Martin, and Isaac Main were taken down in short-hand notes by me, in the presence of the witnesses, by consent of counsel for respective parties to said suit, and thereafter written out

363 under my supervision on typewriter, and that said counsel, in the presence of said witnesses, waived their signatures thereto and also their verification.

I further certify that the said depositions were taken under commission of said court, which commission is hereto attached, and notice of the taking of said depositions being waived by the respective parties, and each party appearing at the taking of said depositions, by their solicitors.

I further certify that I am not of counsel nor attorney for either of the parties to said suit nor interested in the event thereof; that the fees for taking said depositions amount to two hundred and four dollars ($204.00) and have been paid as follows: $109.10 by the plaintiff and $94.90 by the defendants, and that the same are just and reasonable for the services performed.

In witness thereof I have hereunto set my hand at the city of St. Louis, State of Missouri, this 12th day of January, A. D. 1889.

C. C. COWEN,
Special Examiner of the Circuit Court of the United States for the Southern District of Illinois.

ST. LOUIS, *January 12th*, 1889.

OZIAS TOWNSEND
vs.
ST. LOUIS & SANDOVAL COAL & MINING CO.

364 Parties to above-entitled cause to C. C. Cowen, as special examiner, Dr.

To 23 hours' attendance as stenographer at $2.00		$46 00
" 759 folios transcript at 20c		151 80
" 3 witnesses subpœnaed at .50		1 50
" 3 certificates to adjournment at .50		1 50
" 1 final certificate at		50
" swearing 8 witnesses at 5		40
" binding 1 book of evidence at		2 00
" express charged on book of evidence		30
To be paid by plaintiff	$109 10	
Already paid by defendants	94 90	
	$204 00	$204 00

In the Circuit Court of the United States for the Southern District of Illinois.

SATURDAY, *December 8th, A. D.* 1888.

Present: Hon. William J. Allen, district judge.

OZIAS TOWNSEND
vs.
ST. LOUIS & SANDOVAL COAL AND MINING COMPANY *et al.* } In Chancery.

By consent of parties, by their solicitors, it is ordered by the court that C. C. Cowen be, and he is hereby appointed, special examiner to take, under the 67th rule in equity, the testimony in the above-entitled cause and report the same to this court.

365 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

In Circuit Court.

I, James T. Jones, clerk of said court, do hereby certify that the foregoing is a true and complete copy of an order of court this day entered in a certain cause, wherein Ozias Townsend is complainant

and The St. Louis & Sandoval Coal and Mining Company *et al.* are defendants, as the same appears of record in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this 8th day of December, A. D. 1888.

[L. S.] JAMES T. JONES, *Clerk.*

In the Circuit Court of the United States for the Southern District of Illinois.

OZIAS TOWNSEND
vs. } In Chancery.
ST. LOUIS & SANDOVAL COAL & MINING CO. *et al.*

This day personally appeared before the undersigned C. C. Cowen, who, being duly sworn by me, deposes and says that he will faithfully — impartially perform the duties of special examiner in the above-entitled cause to the best of his knowledge and ability.

C. C. COWEN.

Subscribed and sworn to before me this 20th day of December, A. D. 1888.

366 Witness my hand & official seal.

[NOTARIAL SEAL.] M. R. CULLEN,
Notary Public.

UNITED STATES OF AMERICA, } *set:*
Eastern District of Missouri, }

The President of the United States to Henry Wellhoener — John B. Mears, Greeting:

You are hereby commanded to be and appear, without excuse or delay, before C. C. Cowen, Esquire, special examiner of the circuit court of the United States in and for the southern district of Illinois, on the 20th day of December, A. D. 1888, at 10 o'clock a. m., at his office, room 408, No. 421 Chestnut street, in the city of St. Louis and State of Missouri, then and there to testify and the truth to say in a certain cause or matter of controversy in said court depending and referred to said special examiner, wherein Ozias Townsend is plaintiff and St. Louis & Sandoval Coal & Mining Co. *et al.* are defendants, on the part of said plaintiff. Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 17th day of December, in the year A. D. eighteen hundred and eighty-eight. Issued at office in the city of St. Louis the day and year last aforesaid.

C. C. COWEN,
Special Examiner.

We hereby acknowledge service of the within subpœna.

HENRY WELLHOENER.
JOHN B. MEARS.

367 EXHIBIT "A" TO DEPOSITION OF JOHN B. MEARS. C. C. Cowen, Special Examiner.

The grantor Samuel Ewing & Julia Ewing, his wife, of the county of Marion and State of Illinois, for and in consideration of two hundred dollars in hand paid, conveys and warrants to the St. Louis & Sandoval Coal and Mining Company the following-described real estate: The south half of four acres on the north of the right way of the O. & K. rw. and adjoining Primmer's addition to the town of Sandoval and running as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through the said 4 acres from said Primmer's addition eastward, in the W. ½ N. E. ¼ section 17, T. 2, R. 1 E., situate in the county of Marion, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 9th day of January, A. D. 1878.

SAM. EWING. [SEAL.]
JULIA EWING. [SEAL.]

STATE OF ILLINOIS, }
Marion County, } ss:

I, Andrew Roll, a justice of the peace in and for said county in the State aforesaid, do hereby certify that Samuel Ewing and Julia Ewing, his wife, personally known to me to be the same persons whose name- are subscribed to the foregoing instrument, appeared before me this day in person and acknowledge that they
368 signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal this 9th day of January, A. D. 1878.

ANDREW ROLL, *J. P.* [SEAL.]

369 EXHIBIT "B" WELLHOENER'S DEPOSITION. C. C. Cowen, Special Examiner.

STATE OF ILLINOIS, DEPARTMENT OF STATE.

George H. Harlow, secretary of state.

To all whom these presents shall come, Greeting:

Whereas it being proposed by the persons hereinafter named to form a corporation under an act of the General Assembly of the State of Illinois entitled "An act concerning corporations," approved April 18, 1872, in force July 1, 1872, the object and purposes of which corporation are set forth in a statement duly signed and acknowledged according to law and filed this day in the office of the secretary of state:

Now, therefore, I, George H. Harlow, secretary of state of the

State of Illinois, by virtue of the powers and duties vested in me by law, do hereby authorize, empower, and license Ozias Townsend, William Bowen, Johnson A. Power, the persons whose names are signed to the before-mentioned statement, as commissioners to open books for subscription to the capital stock of the St. Louis and Sandoval Coal and Mining Company, such being the name of the proposed corporation as contained in the statement, at such times and places as the said commissioners may determine.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this seventeenth day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] GEORGE H. HARLOW,
Secretary of State.

$369\frac{1}{2}$ STATE OF ILLINOIS, DEPARTMENT OF STATE.

George H. Harlow, secretary of state.

To all to whom these presents shall come, Greeting:

Whereas a statement duly signed and acknowledged having been filed in the office of the secretary of state on the 17th day of October, A. D. 1877, for the organization of the St. Louis and Sandoval Coal and Mining Company under and in accordance with the provisions of "An act concerning corporations," approved April 18, 1872, and in force July 1, 1872, a copy of which statement is hereto attached;

And whereas a license having been issued to Ozias Townsend, William Bowen, Johnson A. Power as commissioners to open books for subscription to the capital stock of said company;

And whereas the said commissioners having, on the 12th day of December, A. D. 1877, filed in the office of the secretary of state a report of their proceedings under the said license, a copy of which report is hereto attached:

Now, therefore, I, George H. Harlow, secretary of state of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said The St. Louis and Sandoval Coal and Mining Company is a legally organized corporation under the laws of this State.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State.

Done at the city of Springfield this 12th day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] GEO. H. HARLOW,
Secretary of State.

370 STATE OF ILLINOIS, } ss:
Saint Clair County, }

To Geo. H. Harlow, secretary of state:

We, the undersigned, Ozias Townsend, William Bowen, and Johnson A. Power, propose to form a corporation under an act of the General Assembly of the State of Illinois entitled "An act concerning corporations," approved April, 1872, and that for the purposes of such organization we hereby state as follows, to wit:

1. The name of such corporation is the Saint Louis and Sandoval Coal and Mining Company.

2. The object for which it is formed is the mining of coal at or near the city of Sandoval, in the county of Marion, State of Illinois, and also for the purpose of selling, delivering, and contracting the same when demanded.

3. The capital stock shall be fifty thousand dollars.

4. The amount of each share is one hundred dollars.

5. The number of shares is five hundred.

6. The location of the principal office is in Sandoval, in the county of Marion, State of Illinois.

The duration of the corporation shall be ninety-nine years.

OZIAS TOWNSEND.
WILLIAM BOWEN.
JOHNSON A. POWER.

371 STATE OF ILLINOIS, } ss:
County of Saint Clair, }

I, William P. Launtz, a notary public in and for the said county and State aforesaid, do hereby certify that on this 15th day of October, A. D. 1877, personally appeared before me Ozias Townsend, William Bowen, and Johnson A. Power, to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they had executed the same for the purposes therein set forth.

In witness whereof I have hereunto set my hand and seal the day and year above written.

[SEAL.]

WILLIAM P. LAUNTZ,
Notary Public, Saint Clair County.

372 *By-laws of the St. Louis and Sandoval Coal and Mining Company.*

Article I.

SECTION 1. The officers of this company shall consist of a president and secretary, each of whom shall be elected by ballot and who shall hold their offices for one year and until their successors are elected and qualified.

SEC. 2. All elections of officers shall be by ballot, and no person shall be eligible to hold office who is not a stockholder of the company.

SEC. 3. Every stockholder shall be entitled to one vote for each share of stock owned by him, and a majority of all the votes cast shall be necessary to a choice.

Article II.

SECTION 1. The president of this company shall, until otherwise ordered, be the *ex officio* superintendent of the affairs, business, and constructions engaged in; shall preside at all meetings of the board of directors, sign all documents and papers relating to the interests of the company where its seal is to be used; order special meetings of the board of directors at his option or when required so to do in writing by any three directors; act as chairman of the executive committee and generally perform duties which executive officers of such companies are required to do.

SEC 2. It shall be the duty of the secretary and who shall be, until otherwise ordered, *ex officio* treasurer of the company; to keep a full and correct record of all the proceedings had by the board, which record shall at all times be open to the inspection of any
373 stockholder; he shall keep the books of the company, attend to the transfer of all stocks and act as the custodian of the corporate seal and all deeds and other valuable papers belonging to the company. It shall be his duty while acting as treasurer to keep a strict account of all the receipts and disbursements; to make a daily deposit, at such banks as may be designated by resolution of the board, in the name of the company of all moneys coming into his hands and to make a full report once a month or oftener, if requested, to the executive committee, showing the condition of the company's finances. If it shall be deemed advisable he shall further deliver to the president such bond for the faithful performance of his duties as the board may by resolution direct.

SEC. 3. All moneys belonging to the company shall be deposited and kept on hand at the bank or banks designated as such depository by the board and the same shall only be paid out when so deposited to the credit of the company upon checks drawn by the secretary and *ex officio* treasurer and countersigned by the president, and all checks for an amount greater than fifty dollars shall also be endorsed by the executive committee as approved by them.

SEC. 4. The board of directors shall fix the salaries, which shall be paid to the president and superintendent and to the secretary and treasurer at such sum as they may deem right and proper, but no salaries shall commence to run until the officers in question shall have entered upon the active performance of duties in the construction of works or excavation and the disbursement of payments.

SEC. 5. The traveling expenses of the board of directors so paid out on behalf of the company shall be paid out of the fund of the company.

374 Article III.

SECTION 1. The board of directors shall, at their first meeting or as soon after as practicable, elect, by ballot, an executive committee,

to consist of two members of whom the secretary shall not be one, to serve for one year and until their successors are elected and qualified. All vacancies in said committee shall in like manner be filled by election of the board.

SEC. 2. The executive committee shall have general supervision over the affairs of the company. If in their judgment the interests of the company demand it, they may suspend the functions of any officer until a meeting of the board can be had and which shall be called forthwith, and if a majority of the board shall approve the action of the committee, such officer shall remain suspended for the balance of his term and some one shall be elected by the board to provisionally hold the same.

SEC. 3. The executive committee shall carefully examine the accounts and vouchers of the secretary and treasurer and endorse their approval on such checks as may be required in conformity with section 3, article 2, and no contract made by any officer on behalf of this company which shall be for a larger sum than five hundred dollars shall be binding unless the same be first approved by the executive committee and its approval endorsed thereon.

Article IV.

SECTION 1. The regular annual meeting of stockholders of this company shall be held at such place as may be designated, in notices published legally ten days in advance, in the State of
375 Illinois, on the eighth day of December in each year unless the same shall fall on Sunday, when it shall be held on the day preceding. Such publication shall be in some daily paper in the city of East St. Louis if any then exist.

SEC. 2. The regular election of five directors shall take place at the annual meeting of the stockholders, and the board of directors so elected shall immediately choose their officers for the ensuing year and also the executive committee for the same.

SEC. 3. Three directors shall constitute a quorum to do the business of the company, and said board shall have power to make all needful rules and regulations for conducting the affairs of the company; shall make such calls on stock from time to time as they may determine by resolution, and if necessary take measures to enforce the payment of the same as prescribed by statutory regulation.

SEC. 4. Special meetings of the board of directors may be called by the president at St. Louis or at such other place as may be deemed expedient for the better transaction of business in hand, and all meetings when signed and ratified by a majority of the board shall be as binding as though held at their regular place of meeting in the State of Illinois.

SEC. 5. The president and secretary shall provide a book containing blank certificates of stock of such design as they may approve, which shall be issued to the stockholders and transferable in the usual mode; but each certificate of stock shall have endorsed on the back thereof a statement signed by the president and counter-

signed by the secretary, with the seal of the company attached,
376 showing the calls which have been made on said stock and the amount paid on the same, with the day and date thereof inserted; and all transfers of stock shall be of record on the transfer book, to be kept by the secretary, and no new certificate shall be issued until the old certificate shall be first surrendered and cancelled.

SEC. 6. If any stockholder should fail to pay his assessments when calls are made he shall pay a fine of ten per cent., to be added to the amount unpaid and charged against him. Should the next assessment not be paid, then again ten per cent. shall be added to the amount due, and so on until the arrears of said stockholder equal the amount which he has paid in, and in such case the share or shares of stock may be declared forfeited.

SEC. 7. These by-laws may be altered or amended or annulled at any time by the board of directors, the proposition to do so first having laid over one meeting.

Names of Directors Elected for the First Year to Manage the Business of this Company.

Ozias Townsend, pres. and sup't.
Henry Wellhoener, sec'y and treas.
Directors: John B. Mears, James Sheales, Isaac Main.
377 Executive committee: Ozias Townsend, John B. Mears.
You ignore Main in all nominations & for this reason I put him in nomination.

378 EXHIBIT "C" TO DEPOSITION OF OZIAS TOWNSEND. C. C. Cowen, Special Examiner.

STATE OF ILLINOIS, DEPARTMENT OF STATE.

George H. Harlow, secretary of state.

To all whom these presents shall come, Greeting:

Whereas it being proposed by the persons hereinafter named to form a corporation under an act of the General Assembly of the State of Illinois entitled "An act concerning corporations," approved April 18, 1872, in force July 1, 1872, the object and purposes of which corporation are set forth in a statement duly signed and acknowledged according to law and filed this day in the office of the secretary of state:

Now, therefore, I, George H. Harlow, secretary of state of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby authorize, empower, and license Ozias Townsend, William Bowen, Johnson A. Power, the persons whose names are signed to the before-mentioned statement, as commissioners to open books for subscription to the capital stock of the St. Louis and Sandoval Coal and Mining Company, such being the name of the proposed corporation as contained in the statement, at such times and places as the said commissioners may determine.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this seventeenth day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] GEORGE H. HARLOW,
Secretary of State.

379 EXHIBIT "D" TO DEPOSITION OF OZIAS TOWNSEND. C. C. Cowan, Special Examiner.

STATE OF ILLINOIS, DEPARTMENT OF STATE.

George H. Harlow, secretary of state.

To all to whom these presents shall come, Greeting:

Whereas a statement duly signed and acknowledged having been filed in the office of the secretary of state on the 17th day of October, A. D. 1877, for the organization of the St. Louis and Sandoval Coal and Mining Company under and in accordance with the provisions of "An act concerning corporations," approved April 18, 1872, and in force July 1, 1872, a copy of which statement is hereto attached;

And whereas a license having been issued to Ozias Townsend, William Bowen, Johnson A. Power as commissioners to open books for subscription to the capital stock of said company;

And whereas the said commissioners having on the 12th day of December, A. D. 1877, filed in the office of the secretary of state a report of their proceedings under the said license, a copy of which report is hereto attached:

Now, therefore, I, George H. Harlow, secretary of state of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said The St. Louis and Sandoval Coal and Mining Company is a legally organized corporation under the laws of this State.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this 12th day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] GEO. H. HARLOW,
Secretary of State.

380 STATE OF ILLINOIS, } ss:
Saint Clair County, }

To Geo. H. Harlow, secretary of state:

We, the undersigned, Ozias Townsend, William Bowen, and Johnson A. Power, propose to form a corporation under an act of the General Assembly of the State of Illinois entitled "An act concerning corporations," approved April 18, 1872, and that for the purposes of such organization we hereby state as follows, to wit:

1. The name of such corporation is the Saint Louis and Sandoval Coal and Mining Company.

2. The object for which it is formed is the mining of coal at or near the city of Sandoval, in the county of Marion, State of Illinois, and also for the purpose of selling, delivering, and contracting the same when demanded.

3. The capital stock shall be fifty thousand dollars.

4. The amount of each share is one hundred dollars.

5. The number of shares is five hundred.

6. The location of the principal office is in Sandoval, in the county of Marion, State of Illinois.

7. The duration of the corporation shall be ninety-nine years.

OZIAS TOWNSEND.
WILLIAM BOWEN.
JOHNSON A. POWER.

381 STATE OF ILLINOIS, }
County of Saint Clair, } *ss:*

I, William P. Launtz, a notary public in and for the said county and State aforesaid, do hereby certify that on this 15th day of October, A. D. 1877, personally appeared before me Ozias Townsend, William Bowen, and Johnson A. Power, to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they had executed the same for the purposes therein set forth.

In witness whereof I have hereunto set my hand and seal the day and year above written.

[SEAL.] WILLIAM P. LAUNTZ,
Notary Public, Saint Clair County.

382 To Hon. George H. Harlow, secretary of state of the State of Illinois:

The commissioners duly authorized to open books of subscription to the capital stock of the Saint Louis and Sandoval Coal and Mining Co., pursuant to license heretofore issued, bearing date the seventeenth day of October, A. D. 1877, do hereby report that they opened books of subscription to the capital stock of said company, and that the said stock was fully subscribed; that the following is a true copy of such subscription, viz:

We, the undersigned, hereby severally subscribe for the number of shares set opposite our respective names to the capital stock of the Saint Louis and Sandoval Coal and Mining Co. and we severally agree to pay the said company on each share the sum of one hundred dollars.

	Names.	Shares.	Amount.
	Isaac Main	2	$200 00
	L. Nowland	1	100 00
	I. Lichty	2	200 00
	C. N. Rockwell	1	100 00
	Isaac Main	3	300 00
	Andrew Roll	5	500 00
	Charles Reinhardt	5	500 00
	Francis H. Edwards	5	500 00
	J. A. Power	2	200 00
	Henry Wellhoener	50	5,000 00
	Albert E. Ross	1	100 00
	Mrs. Mary Ann McCabe	10	1,000 00
	Ozias Townsend	393	39,300 00
	Thomas B. Hill	1	100 00
383	James Sheales	10	1,000 00
	James Collins	5	500 00
	John B. Means	2	200 00
	C. N. Rockwell	2	200 00
		500	$50,000 00

That on the eighth day of December, A. D. 1877, at the city of East St. Louis, in Illinois, at the hour of 12 o'clock m., they convened a meeting of the subscribers aforesaid, pursuant to notice required by law; which said notice was deposited in the post office, properly addressed to each subscriber, ten days before the time fixed therein, a copy of which said notice is as follows, to wit:

To ——:

You are hereby notified that the capital stock of the Saint Louis and Sandoval Coal and Mining Company has been fully subscribed, and that a meeting of the subscribers of such stock will be held at East Saint Louis, cor. 4th & Missouri Av., on the eighth day of December, A. D. 1877, at 12 o'clock m., for the purpose of electing a board of directors for said company and for the transaction of such other business as may be deemed necessary.

OZIAS TOWNSEND,
JOHNSON A. POWER,
Commissioners.

That the subscribers met at the time and place in said notice specified and proceeded to elect directors, and that the following persons were duly elected for the term of one year as follows:

Ozias Townsend, 1 year.
Henry Wellhoener, 1 year.
384 Isaac Main, 1 year.
James Shields, 1 year.
John B. Means, 1 year.

(Signed) OZIAS TOWNSEND,
JOHNSON A. POWER,
Commissioners.

STATE OF ILLINOIS, }
County of Saint Clair, } ss:

On this eleventh (11) day of December, A. D. 1877, personally appeared before me, a notary public in and for said county, in said State, Ozias Townsend and Johnson A. Powers and made oath that the foregoing report by them subscribed is true in substance and in fact.

[SEAL.] WILLIAM P. LAUNTZ,
Notary Public.

STATE OF ILLINOIS, }
Marion County, } ss:

The within instrument was filed for record December 27th, 1879, at 11 o'clock a. m., and duly recorded in Book No. 2 of Miscellaneous Record, on page 50.

H. R. HALL, *Recorder.*

385 This instrument of writing made and entered into this sixth day of November A. D. 1877, by and between the undersigned, whose names are incorporated herein, and attached hereto, as granters, all residents of the county of Marion, and State of Illinois, parties of the first part, and Ozias Townsend, of the city of Saint Louis, and State of Missouri, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar, in hand paid, to each of them by the said party of the second part, the receipt of which is hereby acknowledged, and of divers other good and sufficient consideration them thereunto moving, do by these presents grant, bargain, sell and convey, confirm and warrant unto the said party of the second part and his legal representatives,—the exclusive right to mine and excavate for coal, and to remove and dispose of the same, under and beneath the several tracts, of land or town lots owned by them separately and herein designated as lying and being in the county of Marion, and State of Illinois, and the town lots in the village of Sandoval, and more specially particularly and distinctively set forth as follows: The west half of section seventeen (17) township two (2), north range one (1) east of third (3rd) principal meridian, and known as the village of Sandoval, Joshua Ellis, Julia Ellis, Sebastin Seidel, Fredrick Seidel, William Mutschler, Anna Mutschler, F. H. Edwards, M. E. Edwards, Isaac Main, L. H. Main, Peter Shell, Mitie Shell, Jacob Lichty, A. M. Lichty, W. H. Steiner, Martha E. Steiner, Math. Konstanzer, Louesa Konstanzer, E. Steine, Marianne Steine, Lovinia Keister, Jennie Montgomery, Julia McDowell, L. C. Ruley, D. N. Ruby, Sebastain Kleine, Marrianne Ditche, Kleine, Lovead T. Dean, E. J. Dean, J. W. Brimmer, E. A. Primmer, George B. Kutz, Maggie Kutz, R. L. Shanklin, Elendes Shanklin, B. N. Cook, Fidel Berkle, Sidoni Berkle, Silas Dolsen, Catherine Dolsen, I. B. Sherman, Mary J. Sherman, L. Nowland, Fredrick Beisman, M. G. Nowland, Carl Miller, Catherine Miller, Lewis
386 Robertson, Edgar L. Briscoe, Emma A. Briscoe, James Vawtes,

Mary W. Bohn, John Bohner, Anna Bohner, Richard Whalen, Elenor Whalen, James Holehan, Elvera Holehan, Phillip Crosby, Catherine Crosby, Margaret A. Vass, Ruth Sherman, Mary J. Ingram, M. W. Sherman, H. R. Sherman, H. F. Sherman, Matilda Sherman, Thomas Douglas, Alice Douglas, Bridget Kelly, John Scott, Briget Scot, Leander T. Skeen, Catherine Skeen, Isaiah Skeen, July M. Skeen, Susan Power, Sam. Reed, Julia E. Reed, Caroline A. Stewart, Herman Kern, Henrietta Kern, Joseph Keiffer, Barbary Keiffer, James Aird, Sophia A. Fisher, R. G. Lewis, E. R. Lewis, Charles Reinharett, Fredrice Reinharett, M. Stead, Michael Brown, Mary E. Brown, James Mehon, Ann Mehon, Mary Boston, Thomas Hickey, Catherine Jane O'Conner, Peter Smith, Martha Smith, Samuel Ewing, Julia Ewing, Rosa Kleine, J. B. Damon, Cornelius Cummins, Mary Cummins, Herman Merten, M. E. Merten, Henry McClelland, Sarah A. McClelland, J. H. Wilson, C. S. Wilson, W. E. Stewart, Ruth —— Michael English, Mrs. English, his wife. To have and to hold the same with all the mining right and privileges aforesaid, unto the said Ozias Townsend, party of the second part and his legal representatives, in trust however for the following purposes, to wit:

Whereas a corporation is being organized under the laws of the State of Illinois, for the purpose of mining coal, and transporting and selling the same under the name and style of the "Saint Louis and Sandoval Coal and Mining Company" and for the purpose in connection therewith of sinking a shaft and erecting works for delivery, and whereas the sum of fifty thousand dollars has been pledged and will be subscribed to the same, and whereas, it is desired by the parties of the first part grantors herein as aforesaid to aid those engaged in organizing this enterprise so that the said company may have the exclusive right to mine, remove, sell and dispose of all the coal found in and under said tracts and parcels of land, and town lots herein granted for the sole use and benefit of said corporation. Now therefore, it is hereby expressly
387 stipulated and made a condition of this instrument, that we, the parties of the first part whose names are hereto subscribed, do grant, bargain, sell, convey and confirm unto the said Ozias Townsend, the said mining right as to each of our respective tracts of land, or town lots, or lot, as the case may be, for the sole use and benefit of said Saint Louis and Sandoval Coal and Mining Company, and it is hereby made his duty and he is empowered in conformity thereto, at the request of the president of said company, made in writing immediately to grant, bargain, and sell, convey and confirm all the right and estate herein vested in him as trustee aforesaid to the Saint Louis and Sandoval Coal and Mining Company, as fully as the parties of the first part have hereby granted, bargained, sold and conveyed and confirmed the same to him.

It is further understood and stipulated that the covenants herein expressed or which may be implied by law are hereby expressly limited as to each of us the grantors, so that the same shall only affect and apply to the tract or tracts or lot or lots, respectively owned by us and not to any tract or lot owned by any other grantor.

It is further stipulated that the said mining privilege and right to remove and dispose of coal shall in nowise interfere with the disposal, ownership or possession of the several tracts or town lots for any other purpose whatsoever, nor shall it carry with it any right to dig or excavate on the premises other than to mine beneath the same, or to interfere with the use of the same for household purposes, for building upon the same or for the cultivation of the soil.

It is further stipulated that the full amount of said capital stock, being the sum of fifty thousand dollars, shall be subscribed, and the Saint Louis and Sandoval Coal and Mining Company organized under the laws of the State of Illinois, also that within one year from the date of this instrument, the sinking of a shaft for mining coal at the village of Sandoval and within the county of
388 Marion, shall be begun and that the same shall be completed within a period of two years, from the same date, and if this stipulation shall fail to be complied with then this deed shall be null and void, otherwise to remain in full force and effect.

In testimony whereof all the parties hereto have set their hands and affixed their seals this day and year first above written.

Signed,

Joshua Ellis.	[Seal.]	Julia A. Ellis	[Seal.]
Sebastian Seidel.	[Seal.]	Fredrick Seidel.	[Seal.]
William Mutschler.	[Seal.]	Anna Mutschler.	[Seal.]
F. H. Edwards.	[Seal.]	M. E. Edwards.	[Seal.]
Isaac Main.	[Seal.]	L. H. Main.	[Seal.]
Peter Shell.	[Seal.]	Mitie Shell.	[Seal.]
Jacob Lichty.	[Seal.]	A. M. Lichty.	[Seal.]
W. H. Steiner.	[Seal.]	Martha E. Steiner.	[Seal.]
Math. Konstanzer.	[Seal.]	Louesa Konstanzer.	[Seal.]
E. Steine.	[Seal.]	Marianne Steine.	[Seal.]
Lovinia Keister.	[Seal.]	Jennie Montgomery.	[Seal.]
Julia McDowell.	[Seal.]	L. C. Ruby.	[Seal.]
D. N. Ruby.	[Seal.]	Sebastain Kleine.	[Seal.]
Marianne Ditche Kleine.	[Seal.]	Lovead T. Dean.	[Seal.]
E. J. Dean.	[Seal.]	J. W. Primmer.	[Seal.]
E. A. Primmer.	[Seal.]	Mrs. Maggie Kutz.	[Seal.]
George B. Kutz.	[Seal.]		
R. L. Shanklin.	[Seal.]	Elendes Shanklin.	[Seal.]
B. N. Cook.	[Seal.]	Fidel Berkle.	[Seal.]
Sidoni Berkle.	[Seal.]	Silas Dolsen.	[Seal.]
Catherine Dolsen.	[Seal.]	I. B. Sherman.	[Seal.]
Mary J. Sherman.	[Seal.]	L. Nowland.	[Seal.]
M. G. Nowland.	[Seal.]	Fredrick Beisman.	[Seal.]
Carl Miller.	[Seal.]	Catherine Miller.	[Seal.]
389 Lewis Robertson.	[Seal.]	Edgar F. Briscoe.	[Seal.]
Emma A. Briscoe.	[Seal.]	James Vanter.	[Seal.]
Mary W. Bohn.	[Seal.]	John Bohner.	[Seal.]
Anna Bohner.	[Seal.]	Richard Whalen.	[Seal.]
Elenor Whalen.	[Seal.]	Phillip Crosby.	[Seal.]
Catherine Crosby.	[Seal.]		

Margaret A. Vass.	[Seal.]	Ruth Sherman.	[Seal.]
Mary J. Ingram.	[Seal.]	M. H. Sherman.	[Seal.]
H. R. Sherman.	[Seal.]	H. F. Sherman.	[Seal.]
Matilda Sherman.	[Seal.]	James Holehan.	[Seal.]
Elvera Holehan.	[Seal.]	Thomas Douglas.	[Seal.]
Alice Douglas.	[Seal.]	Briget Kelly.	[Seal.]
John Scott.	[Seal.]	Briget Scott.	[Seal.]
L. T. Skeen.	[Seal.]	Catherine Skeen.	[Seal.]
Isaih Skeen.	[Seal.]	July M. Skeen.	[Seal.]
Susan Power.	[Seal.]	Samule Reed.	[Seal.]
Julia A. Reed.	[Seal.]	C. A. Stewart.	[Seal.]
Herman Kern.	[Seal.]	Henrietta Kern.	[Seal.]
Joseph Keiffer.	[Seal.]	Barbary Keiffer.	[Seal.]
Joseph Aird.	[Seal.]	Sophia Fisher.	[Seal.]
R. G. Lewis.	[Seal.]	E. R. Lewis.	[Seal.]
Charles Reinhartt.	[Seal.]	Fredrice Reinhartt.	[Seal.]
M. Stead.	[Seal.]	Michael Brown.	[Seal.]
Mary E. Brown.	[Seal.]	James Mehon.	[Seal.]
Ann Mehon.	[Seal.]	Mary Boston.	[Seal.]
Thomas Mickey.	[Seal.]	Catherine Hickey.	[Seal.]
Jane O'Conner.	[Seal.]	Peter Smith.	[Seal.]
Martha Smith.	[Seal.]	Sam. Ewing.	[Seal.]
Julia Ewing.	[Seal.]	Rosa Kleine.	[Seal.]
J. B. Damon.	[Seal.]	Cornelius Cummins.	[Seal.]
390 Mary Cummins.	[Seal.]	Herman Merten.	[Seal.]
M. E. Merten.	[Seal.]	Henry McClelland.	[Seal.]
Sarah A. McClelland.	[Seal.]	J. H. Wilson.	[Seal.]
C. S. Wilson.	[Seal.]	W. E. Stewart.	[Seal.]
Ruth Stewart.	[Seal.]	M. English.	[Seal.]
Mrs. English.	[Seal.]	Andrew Roll.	[Seal.]
Sarah A. Roll.	[Seal.]		

STATE OF ILLINOIS, }
Marion County. }

This instrument was filed for record in the recorder's office of Marion county, Illinois, on the 10th day of November, A. D. 1877, at 11 o'clock a. m., and duly recorded in Book DD of Deeds, page 74.

H. R. HALL, *Recorder.*

STATE OF ILLINOIS, }
County of Marion, } *ss.:*

Be it remembered that on this — day of November, A. D. one thousand eight hundred and seventy-seven, personally appeared before the undersigned, a justice of the peace within and for the village of Sandoval, in the county of Marion, and State of Illinois, Joshua Ellis and Julia A. Ellis, his wife; Sebastain Seidel and Fredricke Seidel, his wife; William Mutschler and Anna Mutschler, his wife; F. H. Edwards and M. E. Edwards, his wife; Isaac Main and L. H. Main, his wife; Peter Shell and Martha Shell, his wife; Jacob

Lichty and A. M. Lichty, his wife; W. H. Steiner and Martha E. Steiner, his wife; Mathew Konstanzer and Louesa Konstanzer, his wife; Ferdinand Stein and Marianna Stein, his wife; Lovenia Keister, Jennie Montgomery, Julia McDowell, L. C. Ruby and D. N. Ruby, his wife; Sebastain Klein and Marianna Ditche Kline,
391 his wife; Lovead T. Dean and E. J. Dean, his wife; J. W. Primmer and E. A. Primmer, his wife; George B. Kutz and Maggie Kutz, his wife; R. L. Shanklin and Elender Shanklin, his wife; B. N. Cook, Fidel Berkle and Sidone Berkle, his wife; S. H. Dolsen and Catherine Dolsen, his wife; L. Nowland and M. G. Nowland, his wife; Fredrick Beisemann, Carl Miller and Catherine Miller, his wife; Lewis Robertson, Edgar F. Briscoe and Emma A. Briscoe, his wife; James Vanter, Mary W. Bohn, John Bohner and Anna Bohner, his wife; Richard Whalen and Ellenor Whalen, his wife; Phillip Crosby and Catherine Crosby, his wife; —— Vass and Margaret H. Vass, his wife; Ruth Sherman, Mary J. Ingram, H. R. Sherman and M. H. Sherman, his wife; James Holohan and Elvira Holohan, his wife; H. F. Sherman and Matilda Sherman, his wife; Thomas Douglas and Alice Douglas, his wife; Bridget Kelly, John Scott and Bridget Scott, his wife; Leander Skeen and Catherine A. Skeen, his wife; Isaiah Skeen and Julia M. Skeen, his wife; Susan Power, Samuel Reed and Julia E. Reed, his wife; Caroline A. Stewart, Herman Kern and Henriatta Kern, his wife; Joseph Kiefer and Barbara Keifer, his wife; James Aird and —— Aird, his wife; Sophia Fisher, R. J. Lewis and E. R. Lewis, his wife; Charles Reinhart and Fredricka Reinhart, his wife; M. Stead, Michael Brown and Mary E. Brown, his wife; James Mehon and Ann Mehon, his wife; Mary Boston, Thomas Hickey and Cathering Hickey, his wife; Jane O'Conner, Peter Smith and Martha Smith, his wife; Samuel Ewing and Julia Ewing, his wife; Rosa Klein, J. B. Damon, Henry McClelland and Sarah A. McClelland, his wife; I. H. Wilson and C. S. Wilson, his wife; W. E. Stewart and Ruth Stewart, his wife; Michael English and Mrs. English, his wife; Andrew Roll and Sarah A. Roll, his wife; who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned, and that they signed, sealed, and delivered the same as their free and voluntary act for the purposes therein mentioned.

392 In testimony whereof I have hereunto set my hand and seal this 10th day of Nov., year first above written.

ANDREW ROLL, *J. P.* [SEAL.]

This instrument of writing made and entered into this sixth day of November, A. D. 1877, by and between the undersigned whose names are incorporated herein and attached hereto as grantors all residents of the county of Marion, and State of Illinois, parties of the first part, and Ozias Townsend of the city of Saint Louis and State of Missouri, party of the second part, witnesseth:

That the said parties of the first part for and in consideration of

the sum of one dollar in hand paid, to each of them by the said party of the second part, the receipt of which is hereby acknowledged, and of divers others good and sufficient considerations them thereunto moving, do by these presents grant, bargain, sell and convey, confirm and warrant unto the said party of the second part and his legal representatives, the exclusive right to mine and excavate for coal and to remove the same and dispose of the same under and beneath the several tracts of land owned by them separately, and herein designated as lying and being in the county of Marion, State of Illinois, and more especially particularly and distinctively set forth as follows: Steven G. Edwards and Estella Edwards his wife, the east half of the west quarter of the N. W. quarter of section twenty (20) and George Meyers and Matilda Meyers his wife, the N. west quarter of N. east quarter of section twenty (20) and George Douglas and Mary Douglass his wife, the north side of the west half ($\frac{1}{2}$) of N. west quarter of the N. west quarter of section twenty (20) also the north side of the northeast quarter of the northeast quarter of section nineteen (19) making in all thirty (30) acres. John Knight and Susan Knight his wife, thirty (30) acres of the northwest quarter of the northeast quarter of section
393 nineteen (19), F. W. Nodine and Matilda Nodine his wife, ten (10) acres in the northwest quarter of the northeast quarter of section nineteen (19), Cornelius N. Rockwell and Lucinda N. Rockwell his wife, sixty (60) acres of the northwest quarter of section nineteen (19) running eighty (80) rods east from the third principal meridian, one hundred and twenty rods (120) south from northwest corner of said section, Andrew Roll and Sarah Ann Roll his wife, the east half of southwest quarter of section eighteen (18), Joseph B. Damon, southwest quarter of southeast quarter of section eighteen (18), P. B. Gaylord and Cordelia C. Gaylord his wife, the southeast quarter of the southeast quarter of section eighteen (18), Charles Miller and Catherine Miller his wife, ten (10) acres east side of southwest quarter of northeast quarter of section eighteen. John Boner and Anna Boner his wife, the northwest quarter of the southwest quarter of section eight (8), Henry Boner the northeast quarter of section seven (7) and William E. Stewart and Ruth Stewart his wife, twenty (20) acres in the west half of the west half of the northeast quarter of section nine (9). Samuel Ewing and Julia Ewing his wife, the east half of the northeast quarter of section seventeen (17) and Thomas Douglass and Alice Douglass his wife, sixteen acres (16) of land being part of the southeast quarter of section seventeen (17), Edgar L. Briscoe and Emma A. Briscoe his wife, thirty (30) acres in the south part of the west half of the southeast quarter of section seventeen (17), Samuel S. McClelland 26 acres E. p't S. W. qr. of the N. W. qr. sec. 20 in Illinois central division. Sebastain Seidel and Fredrickie Seidel his wife, block five (5) and block twelve (12).

Ferdinand Stein and Marianne Stein his wife, east half block (13) thirteen.

William Mutschler and Anna Mutschler his wife west half block thirteen (13).

Thomas O'Brien and Mary O'Brien his wife, lots 8 & 9 in
394 west half of N. E. quar. section seventeen one acre. In Illinois central division Emily H. Dolsen, east half block twenty (20). James Vanter, blocks (28) twenty-eight and (29) twenty-nine.

All of the above-described tracts of land are situated in town. two north, range one, east of the third principal meridian.

To have and to hold the same with all the mining rights and privileges aforesaid, unto the said Ozias Townsend, party of the second part and his legal representatives, in trust however for the following purposes to wit :—

Whereas a corporation is being organized under the laws of the State of Illinois, for the purpose of mining coal and transporting and selling the same under the name and style of the "Saint Louis and Sandoval Coal and Mining Company" and for the purpose in connection therewith of sinking a shaft and erecting works for delivering, and whereas the sum of fifty thousand dollars has been pledged and will be subscribed to the same, and whereas, it is desired by the parties of the first — grantors herein, as aforesaid to aid those engaged in organizing this enterprise so that the company, the said company may have the exclusive right to mine, remove, sell and dispose of all the coal found in and under said tracts and parcels of land herein granted for the sole use and benefit of said corporation. Now therefore, it is hereby expressly stipulated and named and made a condition of this instrument that we the parties of the first part, whose names are hereto subscribed do grant, bargain, sell, convey and confirm unto the said Ozias Townsend, the said mining right as to each of our respective tracts of land for the sole use and benefit of said Saint Louis and Sandoval Coal and Mining Company, and it is hereby made his duty and he is empowered in conformity thereto
at the request of the president of said company made in writ-
395 ing immediately to grant, bargain, and sell convey and confirm all the rights and estate herein vested in him as trustee aforesaid of the Saint Louis and Sandoval Coal and Mining Company as fully as the parties of the first part have hereby granted, bargained, sold and conveyed and confirmed the same to him.

It is further understood and stipulated that the covenants herein expressed or which may be implied by law are hereby expressly limited as to each of us the grantors, so that the same shall only affect and apply to the tract or tracts respectively owned by us, and not to any tract or lot owned by any other grantor.

It is further stipulated that the said mining privilege and right to remove and dispose of coal shall in nowise interfere with the disposal, ownership or possession of the several tracts for any other purpose whatsoever, nor shall it carry with it any right to dig or excavate on the premises other than to mine beneath the same or to interfere with the use of the same for household purposes, for building upon the same, or for the cultivation of the soil.

It is further stipulated that the full amount of the said capital stock, being the sum of fifty thousand dollars, shall be subscribed and the Saint Louis and Sandoval Coal and Mining Company or-

ganized under the laws of the State of Illinois, also that within one year from the date of this instrument the sinking of a shaft for mining coal at the village of Sandoval, and within the county of Marion, shall be begun and that the same shall be completed within two years from the same date, and if this stipulation shall fail to be complied with then this deed shall be null and void, otherwise to remain in full force and effect.

In testimony whereof all the parties hereto have set their hands and affixed their seals the day and year first above written.

C. N. Rockwell.	[Seal.]	Lucinda N. Rockwell.	[Seal.]
S. G. H. Edwards.	[Seal.]	E. M. Edwards.	[Seal.]
Sam. Ewing.	[Seal.]	Julia Ewing.	[Seal.]
396 John Bohner.	[Seal.]	Anna Bohner.	[Seal.]
Carl Miller.	[Seal.]	C. Miller.	[Seal.]
P. B. Gaylord.	[Seal.]	C. C. Gaylord.	[Seal.]
Sebastain Seidel.	[Seal.]	Frederick Seidel.	[Seal.]
Henry Bohner.	[Seal.]	W. E. Stewart.	[Seal.]
Ruth Stewart.	[Seal.]	Thomas O'Brien.	[Seal.]
Mary O'Brien.	[Seal.]	Samuel S. McClelland.	[Seal.]
Elsie C. McClelland.	[Seal.]	George Meyers.	[Seal.]
Matilda Meyers.	[Seal.]	John Knight.	[Seal.]
Susan Knight.	[Seal.]	Tillie Nodine.	[Seal.]
F. W. Nodine.	[Seal.]	George Douglass.	[Seal.]
Mary Douglass.	[Seal.]	Emily H. Dolson.	[Seal.]
F. Stein.	[Seal.]	M. Stein.	[Seal.]
J. B. Damon.	[Seal.]	James Vanter.	[Seal.]
William Mutschler.	[Seal.]	Anna Mutschler.	[Seal.]
Andrew Roll.	[Seal.]	Sarah A. Roll.	[Seal.]
E. L. Briscoe.	[Seal.]	Emma A. Briscoe.	[Seal.]
Thomas Douglass.	[Seal.]	Alice Douglass.	[Seal.]

STATE OF ILLINOIS, } ss:
Marion County, }

I, Joshua Ellis, a justice of the peace in and for the said county, in the State aforesaid, do hereby certify that Andrew Roll and Sarah A. Roll, his wife, personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that *he* signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and seal this 13th day of November, A. D. 1877.

JOSHUA ELLIS,
Justice of the Peace.

397 STATE OF ILLINOIS, } ss:
Marion County, }

Be it remembered that on this day of November, A. D. one thousand eight hundred and seventy-seven, before the undersigned, a

justice of the peace within and for the village of Sandoval, county of Marion and State of Illinois, personally came Cornelius Rockwell, Lucinda Rockwell, his wife; S. G. H. Edwards, Estella Edwards, his wife; Samuel Ewing and Julia Ewing, his wife; John Bohner and Anna Bohner, his wife; Carl Miller and Catherine Miller, his wife; P. B. Gaylord and C. C. Gaylord, his wife; Sebastain Seidel and Fredrick Seidel, his wife; Henry Bohner; W. E. Stewart and Ruth Stewart, his wife; Thomas O'Brien and Mary O'Brien, his wife; Samuel S. McClelland and Ellen McClelland, his wife; George Meyers and Matilda Meyers, his wife; Emily H. Dolsen; Ferdinand Steine and Marianne Steine, his wife; J. B. Damon, James Vanter; William Mutschler and Anna Mutschler, his wife; Edgar L. Briscoe and Emma A. Briscoe, his wife; Thomas Douglass and Alice Douglass, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their respective acts and deeds for the purpose therein stated, and that they signed, sealed, and delivered the same as their voluntary act for the purposes therein mentioned.

Given under my hand and seal this 13th day of November, A. D. 1877.

ANDREW ROLL, *J. P.* [SEAL.]

This part of the form is not required under our laws.

A. ROLL, *J. P.*

Having been by me severally examined, separate and apart and out of the hearing of their respective husbands, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to them, and they also by me being fully informed of their rights under the law, acknowledged that they had voluntarily (each for herself) executed the same and relinquished their dower to the lands and tenements therein mentioned and without the compulsion of their said husbands, and that they do not wish to retract the same.

Given under my hand and seal this — day of November, A. D. 1877.

——— ———.

398 STATE OF ILLINOIS, } ss:
Marion County, }

This instrument was filed for record in the recorder's office of Marion county, Illinois, November 14th, A. D. 1877, at 10 o'clock a. m., and duly recorded in Deed Record D D, page 90 to 94.

H. R. HALL,
Clerk and Recorder.

399 EAST ST. LOUIS, *Dec. 8th*, 1877.

Proceedings of Stockholders of the St. Louis and Sandoval Coal and Mining Company.

A meeting of the stockholders of above-named company held in East St. Louis, Ill., for electing five directors on Dec. 8th, 1877.

Mr. James Collins was chosen *pro tem.* president and John B. Mears as sec't'y *pro tem.*

On motion, resolved that an election of five directors by ballot should take place, which election resulted in the choice of Ozias Townsend, John B. Mears, Henry Wellhoeser, Isaac Main, and Jas. Sheals.

EAST ST. LOUIS, ILLS., *Dec. 8th*, 1877.

Proceedings of Meetings of the Board.

At a meeting of the board of directors of the St. Louis and Sandoval Coal and Mining Company held at the hall, corner of 4th and Missouri avenues, in the city of East St. Louis, St. Clair county, Ills., Isaac Main was called to the chair and Henry Wellhoeser was elected temporary secretary.

On motion, the board went into an election for officers of the company, which resulted in the election of Ozias Townsend for president and superintendent and John B. Mears for secretary and treasurer of said company for the ensuing year.

On motion, Ozias Townsend, Isaac Main, Henry Wellhoesur *was* elected a committee on by-laws for the company, to report at the next meeting.

On motion, adjourned to meet at the corner of Sixth and Olive St., St. Louis, Mo., on the 20th day of Dec., 1877, at 1 o'clock p. m.

ST. LOUIS, MO., *Dec. 20th*, 1877.

The board of directors meet, pursuant to adopt., — 614 N. Tenth St.

Minutes of last meeting were read and approved.

Present: Ozias Townsend, Issac Main, Henry Wellhoesuer, and John B. Mears.

By-laws adopted section by section.

On motion, the salary of the president, *ex officio* superintendent, was fixed at one hundred and fifty dollars per month
400 for the first term, to commence on the first Jan., 1878.

On motion, it was resolved that the necessary traveling expenses for the board of directors expended in the interest of the company shall be paid out of the fund of the company.

On motion, the bond of the secretary, *ex officio* treasurer, was fixed at five thousand dollars.

On motion, the salary of secretary, *ex officio* treasurer, was laid over until next meeting.

On motion, the proposal of Frank Seymour for sinking shaft ac-

cording to specification was *excepted* and a contract ordered to be drawn accordingly.

On motion, adjourned to meet on the 10th day of Jan., 1878, at 1 o'clock p. m., at 614 N. 9th St., St. Louis, Mo.

St. Louis, Mo., *Jan. 10th*, 1878.

The board of directors met.

Present: Ozias Townsend, Isaac Main, John B. Mears, Henry Wellhoesuer.

Minutes of last meeting were read. Approved.

On motion, the resolution of last meeting relating to the payment of traveling expenses for directors was ordered to be incorporated in the by-laws.

On motion, it was resolved that the names of the directors elected for the first year be printed at the head of the by-laws.

A form of contract *whit-* Frank Seymour for sinking shaft complet- was read by the secretary and, after being discussed, ordered, on motion, to be signed by the president and secretary.

A deed of Sam. Ewing and wife to parcel of ground in Sandoval was read and approved, and, on motion, the president and secretary was ordered to execute a promissory note of the corporation to the order of said Ewing for one hundred dollars due on the 15th day of February, 1878, to complete payment for the same.

On motion, the resignation of John B. Mears as secretary, *ex officio* treasurer, was *excepted* and Henry Wellhoesuer duly elected to the office.

In pursuance of a provision of the by-laws the board pro-
401 ceeded to the election of an executive committee, which resulted in the election of Ozias Townsend and John B. Mears.

Resolution of payment to B. Gratz Brown adopted and a note for two hundred dollars drawn, dated the 10th of Jan., 1878, payable 60 days after date, signed by president and secretary.

The motion of salary of secretary, *ex officio* treasurer, laid over from last meeting was discussed and adopted at fifteen dollars per month till the shaft is sunk.

On motion, adjourned to meet at the call of the president.

St. Louis, Mo., *Feb'y 14th*, 1878.

The board of directors held a meeting on the 14th Feb., 1878.

Present: Ozias Townsend, Henry Wellhoesuer, John B. Mears, Isaac Main.

Minutes of last meeting *where* read and approved.

On resolution, the bond of secretary was called for and read, was found satisfactory, and *excepted*, the same being for the amount of five thousand dollars, signed by parties satisfactory to the board of directors and president.

On resolution, an assessment of five per cent. of the capital stock was then called for, to be paid in on the 19th day of Feb., 1878.

On motion, adjourned till further notice of the president.

ST. LOUIS, *Feb. 15th*, 1878.

In consideration whereas Ozias Townsend, Henry Wellhoesuer, and John B. Mears cannot be at Salem before the 19th day of Feb. to make arrangements *whit* the First National bank, in Salem, therefore the above-named persons agreed for and empowered Isaac Main to receive this first due assessment from the stockholders in or at Sandoval, Marion county, Ills., give receipts for same and the No. of certificate thereon, which assessment hereby was said to be paid on or before the 28th day of Feb., 1878.

ST. LOUIS, *Feb. 26th*, 1878.

402 Resolved by the board of directors present at a meeting on the above date, Ozias Townsend, Henry Wellhoesuer, and John B. Mears, That the assessment shall be paid at No. 803 North Fourth street, St. Louis, Mo., instead of the Northwestern saving bank.

ST. LOUIS, *March 4th*, 1878.

Board of directors met.

Present: Ozias Townsend, Henry Wellhouser, and John B. Mears.

It was moved, seconded, and resolved that the resolution of Feb. 14th, awarding contract to Shmidt, Beggs and Co., is and be rescinded and that the matter of awarding contract for machinery be laid over till next meeting.

On motion, it was resolved that the bill of James Collins for $106.75 for services be disallowed, except $12.75 traveling expenses to Indiana and two days' services, dated Feb. 8th, at $7.50 per day, amounting in all $27.75.

Bill of John B. Mears, amounting $35.00, was excepted.

Bill of Isaac Main, amounting $17.35, was excepted.

Bill of Henry Wellhoeuer, amounting $16.50, was excepted.

Bill of Ozias Townsend, amounting —.

On motion, adjourned till further notice of the president.

Meeting at East St. Louis hotel.

EAST ST. LOUIS, ILL., *March 23rd*, 1878.

Mr. Townsend called the meeting to order.

Present: Messrs. O. Townsend, H. Wellhoeuer, John B. Mears.

Absent: I. Main.

H. Wellhoeuer offered the following amendment to the by-laws, to wit:

Resolved, That the following be, and the same is hereby, declared on additional by-law of this company:

SEC. 8. The directors shall have power to fill any vacancy which may occur in the board by death, resignation, or otherwise, the directors so elected to serve until the next general election of directors.

403 Adopted, those voting for it being Messrs. Mears, Townsend, and Wellhoeuer.

Mr. Mears offered the following resolution:

Resolved, That the president be instructed to furnish such information as he may possess as to the progress of work at the mine at the next meeting.

Council—Mrss. Wellhoeuer, Townsend, and Mears voting in the affimative; absent, Mr. Main.

On motion of Mr. Mears the meeting was adjourned.

CITY OF EAST ST. LOUIS, ILL.

At a special meeting of the board of directors of the St. Louis and Sandoval Coal and Mining Company, called in pursuance of a notice of the several directors and in confirmity *whit* the by-laws of the company, setting forth that the same was to be held at the office of the East St. Louis hotel, in the city of East St. Louis, at the hour of 5 o'clock p. m., there were present the following-named directors, who, constituting a majority quorum of the board, proceeded to the transaction of business. Meeting called to order by Townsend, the president. Verbal report made by that officer as to the condition of the work in progress of the mine.

Henry Wellhoeuer called up resolution submitted at a previous meeting in regard to adoption of additional by-laws, to wit:

Resolved, That the following be, and is hereby, declared an additional by-law of this company:

SEC. 8. The directors shall have power to fill any vacancy in the board which may occur by death, resignation, or otherwise, the directors so elected to serve until the next general election of officers, which was adopted, those voting for it being Mrsser. Wellhoeuer, Mears, and Townsend.

Absent: Isaac Main.

Mr. Mears then nominated True N. Blackman for director, while James Sheals resigned, which nomination was secon-ed by Wellhoeuer, those voting in the affirmative being Messrs. Mears, Townsend, and Wellhoeuer; absent, Isaac Main. Mr. Blackman was thereupon declared as *as* elected a director of the company. Mr. Mears then offered the following preamble and resolutions:

404

Whereas Ozias Townsend has devoted a large share of his time and attention for the past year to the organization of the St. Louis and Sandoval Coal and Mining Company and has expended freely of his money in traveling and promoting its interests and in securing for the said company large and very valuable franchises of coal and mining privileges; and whereas he has devoted his time from the inception of this enterprise and formal application for acticles of association up to the 1st day of January, 1878, and for all of which no compensation has been rendered him: and whereas it is right and proper that he should be paid for his labors in such behalf and should be fully reimbursed for the time and money so expended: Now, therefore,

Be it resolved, 1st, That in full satisfaction for such services and expenditures and for his attention to the business of this company up to and prior to the 1st day of January, 1878, the said Ozias Townsend is hereby allowed, and this company binds itself to pay

to him, the sum of ten thousand dollars, the same to be receipted for by him as in full compensation for said services as aforesaid, and if he shall wish to be indorsed upon the stock held by him as a member of this association as so much paid on account of calls made and to be made on such of the stock as may be held or indicated by him, and such indorsement by the secretary and treasurer of this company shall be held and accounted for as a receipt in full from him for calls on said stock to the amount of ten thousand dollars as aforesaid.

Be it resolved, 2nd, The secretary and treasurer is hereby authorized and directed to endorse upon the stock held by said Townsend, as he shall indicate, payment of calls on the same to the extent aforesaid, and, in event of such endorsement failing, then he shall have a valid claim against this company to that extent for such services hereby acknowledged to be rendered, but not otherwise.

405 Be it resolved—

3rd. That the said Townsend be required to sign duplicate receipts for the reception of the amount endorsed on his stock as aforesaid, and that one, together with copy of this resolutions attached, be retained in the main office at Sandoval and one be retained on file by the sec'y at the office at the city of St. Louis. On motion, the foregoing resolution were adopted, those directors voting for the same being Mrssrs. Mears, Blackman, and Wellhoeuer, Mr. Townsend not voting, Mr. Main absent.

Before adjourning the directors present were requested to sign the minutes of this meeting in token of approval of same, which was accordingly done as hereunto below.

OZIAS TOWNSEND, *Pres.*
HENRY WELLHOEUER, *Sec'y.*

TRUE NORTHY BLACKMAN,
JOHN B. MEARS, *Directors.*

ST. LOUIS, *April 6th*, 1878.

A meeting of the board of directors was held at 206 North 8th street, St. Louis, Mo.

Present: O. Townsend, H. Wellhoeuer, J. B. Mears, and Tr. N. Blackman.

Absent: I. Main.

Mr. Mears moved that T. N. Blackman be employed to visit Sandoval at his earliest convenience for the purpose of looking up the interest of the company, which motion was seconded by H. Wellhoeuer. Adopted, Mears, Wellhoeuer voting in the affirmative, Blackman not voting.

Whereas no further business was offered, then the meeting adjourned till further notice.

ST. LOUIS, MO., *April 29th*, 1878.

Meeting was called to order by the president.

Present: T. N. Blackman, J. B Mears, H. Wellhoeuer, and O. Townsend.

Absent: I. Main.

Minutes of last meeting read and approved. Mr. Blackman reported he interviewed with Sandoval stockholders and submitted dispatch from I. Main, in which he expressed himself in favor of an immediate assessment of five per cent. Mr. Blackman moved that an assessment of 5 per cent. be levied upon all stock issued by this company, and that the stockholders be notified to pay therein assessments within ten days from date. Carried, Messrs. Blackman, Mears, Wellhouer voting in the affirmative, Mr. I. Main absent.

406

Mr. Blackman moved that all stock be declared forfeited on which the assessments have not been paid except that held by Mrs. McCabe, Dr. Ross, and Capt. Hill. Carried.

Messrs. Mears, Blackman, and Wellhoeuer voting in the affirmative. Mr. Blackman offered the following resolution: Resolved, That section 1, article 3, be amended so as to read as follows:

The board of directors shall at their first meeting or as soon as practical elect by ballot an executive committee, to consist of two members, exclusive of the president, and of whom the secretary shall not be one, to serve for one year, until their successors are elected and qualified. All vacancies is said committee shall in like manner be filled by election of the board; which resolution, under sec. 7, art. IV, was laid over to next meeting.

On motion of Mr. Mears, the meeting adjourned.

East St. Louis, Ills., *May* 2, '78.

At a meeting of the board of directors held at the East St. Louis hotel, in the city of East St. Louis, State of Ills., board was called to order by the secretary in the absence of a presiding officer. Mr. Main introduced the following preamble and resolutions:

Whereas Ozias Townsend, late president and superintend*a*nt of this company, has together forfeited for non-payment of assessment and sold and assigned all stock owned, subscribed for, and held by him in this company; and whereas, under art. I, section 2,

407

and of the by-laws of this company, he is no longer elegible to hold office in said company:

Therefore be it resolved, That the office of president and superintend*a*nt be, and is hereby, declared vacant. And be it further resolved, That we, the remaining directors of said company, do proceed to elect a president *pro tem.* to preside at this meeting, which Ozias Townsend disqualified as aforesaid. Mr. Mears moved that the above resolutions be adopted, which motion was seconded — Mr. Main. Carried.

Messrs. Main, Mears, Blackman, Wellhoeuer voting in the affirmative. On motion of Mr. Main, Mr. Mears was nominated as president *pro tem.* of this board, which motion was seconded by Mr. Blackman. Carried, Messrs. Blackman, Main, Wellhoeuer voting in the affirmative, Mr. Mears not voting. Mr. Blackman inquired of the secretary if the books of this company showed that Ozias Townsend is a stockholder is this company. The secretary stated that the book showed that Mr. Ozias Townsend is not a stockholder; that all stock held by him has either been sold, forfeited, or trans-

ferred by him, and that he is not a stockholder in this company at the present time, and that there is a vacancy in the board, occassioned by the disqualification of said Ozias Townsend.

Mr. Main moved that the vacancy occassioned by the disqualification of Ozias Townsend in the board of directors be filled. Adopted.

Mr. Main moved that George Wharton be elected to fill vacancy, which motion was seconded by Mr. Wellhoeuer. Carried, Messrs. Blackman, Main, Wellhouer voting in the affirmative.

Mr. Mears, president *pro tem.*, appointed Messrs. Wellhoeuer and Blackman as tellers. Mr. Wharton, receiving all votes cast, was then declared elected.

Mr. Main moved that we proceed to the election of a president to fill the vac*nacy* occassioned by the disqualification of Ozias Townsend. Carried.

Messrs. Blackman, Main, and Wellhoeuer voting in the affirmative.

408 Mr. Blackman nominated Mr. George Wharton for president, which motion was seconded by Mr. Wellhoeuer. The chairman appointed Mr. Main as teller. Mr. George Wharton, having received all votes cast by the board, was then declared duly elected president and superintend*a*nt of this company and entered upon the discharge of his duties as such.

Mr. Blackman moved that we now proceed to fill vacancy in the executive committee. Carried, Messrs. Main, Mears, Wellhoeuer, and Blackman voting in the affirmative. Mr. Wellhoeuer nominated Mr. Blackman; Mr. Mears nominated Mr. Main. Mr. Blackman received 2 votes and Mr. Main received 2 votes. The votes being a tie, the president voted for Mr. Blackman.

Mr. Blackman was then declared elected as a member of said committee.

On motion, meeting adjourned till further notice.

Copy of the record of the minutes of the St. L. & San. Co. & M. Co.'s directors.

SANDOVAL, ILLS., *May* 23, '78.

Ozias Townsend, Esq.

DEAR SIR: Yours of the 22nd came to hand. According to our minutes you have no right to call a meeting, and, if you want to make any propositions, make them to M. Whorton & Manning, and if they accept them send them out here and we will take it under advisement, as the time is approaching when the court of chancery will say who owns the whole thing. As a friend I advise you to comply with their request.

Yours res., ISAAC MAIN.

409 I, Eug. L. Stoker, special commissioner appointed by the Marion circuit court to take down the oral testimony offered in evidence on the trial of the cause of Frank Seymour *et al. vs.* The St. Louis and Sandoval Coal and Mining Co. at the February term, 1881, of said court, do hereby certify that the above is a true and correct copy of a letter offered in evidence on said tr*a*il and

identified by Ozias Townsend and Isaac Main as a letter written and sent by said Main to Ozias Townsend.

Dated this 23rd day of February, 1881.

EUG. L. STOKER,
Special Commissioner.

STATE OF ILLINOIS, }
Marion County, } ss:

In the Circuit Court, to the August Term, A. D. 1878.

To the Honorable Amos Watts, William Snider, and George W. Wall, judges of the third judicial circuit in the State of Illinois, in chancery sitting:

Your petitioners, Francis H. Edwards, Lambert Noland, Henry Wellhoruer, Frank Seymour, Charles Rinehardt, Isaac Main, Jacob Lichty, and C. N. Rockwell, of the county of Marion and State of Illinois, except Henry Wellhouser, who is of the city of St. Louis, State of Missouri, would respectfully show unto your honors that about the eighth day of December, A. D. 1877, an incorporated company by the name of the St. Louis and Sandoval Coal and Mining Company was organized under the laws of the State of Illinois for the purpose of mining coal at or near the city of Sandoval, in the county of Marion and State of Illinois, and also for the purpose of selling, delivering, and contracting the same when demanded, the capital stock to be fifty thousand dollars and
410 amount — each share one hundred dollars, the location of the principal office in Sandoval, Marion county, Illinois, duration of company to be ninety-nine years; that subscribers to the original capital stock were Isaac Main, one thousand dollars; Lambert Noland, one hundred dollars; Jacob Lichty, two hundred dollars; C. N. Rockwell, three hundred dollars; Andrew Roll, two hundred dollars, $200.00; Charles Rinehardt, five hundred dollars; Francis Edwards, five hundred dollars; Johnson A. Power, two hundred dollars; Henry Wellhouer, five thousand dollars; Albert E. Ross, one hundred dollars; Mary A. McCabe, one thousand dollars; Ozias Townsend, thirty-nine thousand three hundred dollars; Thomas B. Hill, one hundred dollars; James Sheals, one thousand dollars; James Collins, five hundred dollars, and John B. Mears, two hundred dollars, making in all fifty thousand two hundred dollars, the capital stock of said company; all of which will be shown by the certificate of the organization of said corporation filed in the recorder's office of said Marion county and recorded in Miscellaneous Record No. 1, page 453.

That prior to the complete organization of said corporation many of the citizens of the said city of Sandoval and vicinity, in order to promote said enterprise and secure the sinking of a coal shaft in said town, conveyed to one Ozias Townsend in trust for said company the right to dig and mine for coal under their lands and lots.

That such conveyance was well made to him in trust as aforesaid and upon condition that a coal shaft should and would be sunk within two years from the date of such conveyance, being the sixth day of November, A. D. 1877, and that in case of a failure to sink such coal shaft within the said time such deeds should be null and void; all of which persons so conveying such rights as aforesaid, amounts, and conditions, terms, &c., upon which the same was made, will more fully show on reference to said deeds, which are recorded in the recorder's office of said Marion county, State of Illinois, in Book DD, at pages 74 and 90, of said records, and which
411 records is asked to be refer-ed to and introduced in evidence on the hearing hereof; that afterwards and about the eighth day of December, A. D. 1877, the said stockholders held a meeting at East St. Louis, State of Illinois, and proceeded to elect five directors, to wit, Ozias Townsend, John B. Mears, Henry Wellhoeuer, Isaac Main, and James Sheals, who afterwards organized by electing Ozias Townsend president & superintendent and John B. Mears secretary of said company, all of said directors except Isaac Main being residents of St. Louis, Missouri, and said Isaac Main a resident of the town of Sandoval, county of Marion and State of Illinois.

That afterwards and on the ninth day of January, A. D. 1878, the said The St. Louis and Sandoval Coal and Mining Company purchased of one Samuel Ewing two acres of land in or near the said city of Sandoval, in the county of Marion and State of Illinois, on which to sink a coal shaft, erect buildings, &c., and received a deed of conveyance from him, which said deed is recorded in the recorder's office of said Marion county in Book No. 23, page 552, of Deeds, — will more fully show, asked to be referred to on the hearing hereof; and afterwards and on the tenth day of January, 1878, entered into a contract with the complainant Frank Seymour to sink such coal shaft, which said contract is herewith filed, showing the terms, conditions, and price for sinking such shaft, and is made part of his bill of complaint; that, in pursuance of said agreement, said Frank Seymour commenced sinking a coal shaft upon the said land of said company so purchased as aforesaid and continued such work until said shaft was sunk about one hundred fourteen feet and until about the tenth day of March, A. D. 1878, at which time the said company failed to perform its part of said contract and the work stop-ed, and in consequence of the misconduct of said company and its officers the work of sinking said coal shaft has not been resumed since.

That the balance due said complainant for sinking said shaft the depth aforesaid is some seventeen hundred dollars, and
412 the whole cost of sinking said shaft, as by said agreement, will amount to ten thousand eight hundred dollars; and complainant aver- it will be necessary to sink said coal shaft six hundred fifty feet or thereabouts to find coal, and that the actual amount of said companie's indebtedness at this time is near three thousand

dollars and was that amount on the said tenth day of March, A. D. 1878, at the time the work of sinking said coal shaft ceased — aforesaid. Your petitioners further show unto your honors that some time between the twenty-third day of March and the sixth day of April, A. D. 1878, the directors, except Isaac Main, of said company, by resolution, without any consideration and fraudulently, your petitioners charge, acknowledged an indebtedness of ten thousand dollars to said Ozias Townsend for services claimed to be rendered and money expended for said company, which said services and moneys your petitioners charge said company was not liable to him for, and which services he never rendered said company nor expended any money for said company which said company was liable to him for; and in said resolution, if he desired, said ten thousand dollars should be endorsed upon the stock held by him as a member of said company; that afterwards the said Ozias Townsend had issued to his wife, Elizabeth E. Townsend, five thousand dollars paid-up stock in said company upon said pretended indebtedness, four thousand dollars to one George Whorton, and one thousand dollars to one True N. Blackman, making the said ten thousand dollars for which the said Elizabeth E. Townsend, George W. Whorton, and True N. Blackman paid nothing to said company; and for which said amounts the said Elizabeth E. Townsend, George W. Whorton, and True N. Blackman now pretend to own paid-up stock in said company to their said amounts respectively.

Your petitioners further show that on the fourteenth day of February, A. D. 1878, an assessment of five per cent. of said capital stock was made, and the stockholders, Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Rinehart, Francis H. Edwards, and Henry Wellhoeuer, promptly paid up, the company then
413 being indebted to said Frank Seymour more than the amount of his assessment, the balance of the stockholders in said company failed to pay up said assessment fully; and afterwards, on the twenty-ninth day of April, A. D. 1878, the said company declared forfeited all stock on which the assessments had not been paid, except that held by Mrs. McCabe, Dr. Ross, and Capt. Hill, leaving about eight thousand four hundred twenty dollars unpaid capital stock to finish the sinking of said shaft, pay the said indebtedness, and complete the said enterprise, and of the said eight thousand four hundred twenty dollars unpaid capital stock your petitioners believe said Mary A. McCabe, Dr. Ross, and Capt. Hill, owning twelve hundred dollars of the same, are insolvent and unable to pay same; that your petitioners believe the said forfeited stock should be sold, but that under the present condition of said company and officers your petitioners believe and so charge that said forfeited stock would not sell for anything. In view of the premises your petitioners charge that the said The St. Louis and Sandoval Coal and Mining Company is hopelessly insolvent and unable to live up to the end or complete the object for which it was organized.

That in addition to the persons who subscribed for stock and be-

came interested in said corporation named in the original list filed in the recorder's office as aforesaid, subsequently to the organization of said company, are William H. Ross, True N. Blackman, Elizabeth E. Townsend, George Whorton, and the complainant Frank Seymour, all of whom took their stock from or through said Ozias Townsend, and that the directors of said company are now Henry Wellhoeuer, True N. Blackman, George Whorton, John B. Mears, and Isaac Main, all of whom are residents of St. Louis, Missouri, except Isaac Main, who resides at Sandoval, county of Marion, and State of Illinois. Your petitioners further show unto your honors that the said royalty or mining rights so conveyed to said Ozias Townsend in trust as aforesaid for said company, and by him subsequently conveyed to said company, and the said two acres
414 of land on which said company commenced sinking said coal shaft as aforesaid are worth considerable, provided the same can be sold and disposed of in time for the purchaser to sink the said coal shaft within the time limited as aforesaid in said deeds, but are not worth sufficient to pay off and discharge the said indebtedness of said company, and which royalty or mining rights and said two acres of land with the building thereon and shaft sunk as aforesaid is all the property or effects of said company known to your petitioners. Your petitioners further show unto your honors that notwithstanding the said company declared all stock forfeited to said company on which assessments were not paid on the twenty-ninth day of April, A. D. 1878, yet the said indebtedness of said company existed prior to said forfeiture, and the said persons whose stock is forfeited are still liable, as your petitioners believe and charge, for the payment of all indebtedness existing at the date of such forfeiture.

Your petitioners further show unto your honors that said Ozias Townsend, Elizabeth Townsend, Albert E. Ross, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True W. Blackman, and George W. Wharton are, as petitioners are informed and believe, worthless and unable to pay any assessment made on them upon any unpaid stock they may own in said company, and were insolvent at the time they took such stock in said company, all of which facts of insolvency your petitioners learned from their reputations in St. Louis, Missouri, where said parties now reside. Your petitioners further show that said George W. Wharton is now president and superintendent and your petitioners, Henry Wellhoeuer, is secretary of said company; that with the present condition of said company as heretofore shown and the worthless stockholders now owning unpaid stock in said company it is useless for said company to attempt to resume business or attempt to complete said enterprise, and that the affairs of said corporation should be wound up and a receiver appointed and the property of said corporation sold
415 and the proceeds applied to the *the* payment of its said debts, and should the same be insufficient to pay same, then the

said stockholders assessed to pay balance according to the statute in such case provided and said corporation dissolved and *for* not esteemed in law. To the end, therefore, your petitioners make the said The St. Louis and Sandoval Coal and Mining Company, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thomas B. Hill, James Sheales, James Collins, John B. Mears, William H. Ross, True W. Blackman, George W. Wharton, and Elizabeth E. Townsend parties defendants hereto and pray for the usual process of this court directed to the sheriff of Marion county, commanding him to summons the said defendants to be and appear at the August term of this court next, and then and there true and perfect answers make to all and singular the allegations herein, but not under oath (oath to answer being hereby expressly waived); that upon a hearing hereof a receiver be appointed for said The St. Louis and Sandoval Coal and Mining Company, whose duty shall be to take charge of all and singular the property, rights, credits, and effects of said company of whatsoever nature or kind, sell the same at public or private sale, and convert it into money and pay off the indebtedness of said company, and that said corporation be dissolved; that any deficit of the indebtedness of said company after the exhaustion of the property effects of said corporation be paid by the said stockholders *pro rata* according to their respective shares and rights, and that decree be rendered against them for such amount as they may be liable for in that behalf; and will your honors grant such other and further and any and all relief in the premises which may seem meet, proper, and equitable *and* to justice and equity appertains, and in duty bound your petitioners will ever pray, &c.

FRANCIS H. EDWARDS,
LAMBERT NOLAND,
HENRY WELLHOEUER,
FRANK SEYMOUR,
CHARLES RINEHARDT,
ISAAC MAIN,
JACOB LICHTY,
C. N. ROCKWELL.
By HENRY C. GOODNOW,
Their Solicitor.

416 STATE OF ILLINOIS, } ss:
Marion County, }

In the Circuit Court in Chancery, August Term, A. D. 1878.

Decree.

FRANCIS H. EDWARDS, LAMBERT Noland, Henry Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, & C. N. Rockwell,	
vs.	
THE ST. LOUIS AND SANDOVAL COAL and Mining Company, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True W. Blackman, George W. Wharton, & Elizabeth E. Townsend.	Bill to Dissolve Corporation, Appoint Receiver, and for Relief.

MONDAY, *August 12th*, 1878.

And now on this day come the complainants, by Henry C. Goodnow, their solicitor, and it appearing to this court here from the writ issued *that* the sheriff of Marion county and the return thereon that the defendants The St. Louis and Sandoval Coal and Mining Company, Andrew Roll, and Johnson A. Power had been regularly served with process herein at least ten days prior to the first day of the present term of this court, and it further appearing to the court here from the affidavits on file that said defendants Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True W.
417 Blackman, George W. Wharton, and Elizabeth E. Townsend are not residents of the State of Illinois, and that their place of residence is St. Louis, State of Missouri, and that due notice of the pendency of this proceeding has been given by publication for at least four weeks successively, in accordance with the statute in such case made and provided, by notice in the Salem Advocate, a public newspaper printed and published in Marion county, Illinois, the first insertion having been made on the twenty-seventh day of June, A. D. 1878, at least forty days prior to the first day of the present term of this court, and by mailing notice thereof to the address of defendants within ten days of the first publication of said notice at St. Louis, Missouri, a rule is entered that said defendants answer the said bill of complaint by the first Tuesday of this term of court.

And now, again, on the thirteenth day of August, A. D. 1878, come again the complainants, by their said solicitor, and the above rule having expired and all the said above-named defendants, except Andrew Roll, having been severally three times called in open

court to plead, answer, or demur to the complainant's bill, come now, but herein make default. It is therefore ordered, adjudged, and decreed that the same be taken for confessed against the said The St. Louis and Sandoval Coal and Mining Company, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True W. Blackman, George W. Wharton, and Elizabeth Townsend. August 15th, 1878, this cause is again called. Come the complainants, by their said solicitor, and the defendant Andrew Roll withdrew his said answer to said bill of complaint and makes default. It is therefore ordered, adjudged, and decreed that the said bill of complaint be taken for confessed against the said defendant, Andrew Roll, and thereupon this cause came on for hearing upon the bill so taken as confessed by said defendants and exhibits and records referred to in bill, and the court, being fully advised in the premises, doth find that the allegations in said bill contained are true as therein stated; that the
418 court has jurisdiction of the subject-matter and has jurisdiction of the said complainants and said defendants, the parties in this cause, and that the equity of this cause is with the complainants; that the said St. Louis and Sandoval Coal and Mining Company was duly organized under the laws of Illinois for the purpose of mining coal and selling, delivering, and contracting same with a capital stock of fifty thousand two hundred dollars, the said complainants and defendants being the stockholders for the respective amounts charged in the bill of complaint; that said company purchased of one Samuel Ewing the south half of four acres on the north of the right of was of the O. & M. R. W. and adjoining Primmer's addition to the town of Sandoval and running north as far as Scott street, in said addition, and east for enough to contain 4 acres, with the exception of the streets to be continued through the said 4 acres from said Primmer's addition eastward, in the W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ section seventeen, town. two north, range one east, situated in the county of Marion and State of Illinois, on which to sink a coal shaft, and entered into a contract with complainant Frank Seymour to sink said shaft for the consideration of ten thousand eight hundred dollars; that in pursuance of said agreement said Frank Seymour commenced sinking a coal shaft upon said premises and continued such work to about the tenth day of March, A. D. 1878, at which time, in consequence of the misconduct of said company, the said work stopped and has not been resumed since, and that the balance due said Seymour from said company is about seventeen hundred dollars for said work; that the whole amount of said companies' indebtedness on said tenth day of March, A. D. 1878, is some three thousand dol*a*lrs; that some time between the twenty-third day of March, A. D. 1878, and the sixth day of April, A. D. 1878, the directors of said company fraud-lently acknowledged an*d* indebtedness of ten thousand dollars to said Ozias Townsend, which said ten thousand dollars, if he desired, should be endorsed upon the stock held by

him as a member of said company; that afterwards the
419 said Ozias Townsend had issued to his wife, Elizabeth Townsend, five thousand dollars paid-up stock in said company upon said pretended indebtedness; four thousand dollars to said True W. Blackman, making the said ten thousand dollars for which the said Elizabeth Townsend, George W. Wharton, and True W. Blackman paid nothing to said company; that on the fourteenth day of February, A. D. 1878, as assessment of five per cent. of said capital stock was made and the stockholders, Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Reinhardt, Francis H. Edwards, Henry Wellhoeuer, and Frank Seymour, promptly paid and the balance of said stockholders refused and failed to pay said assessment, and afterwards, on the twenty-ninth day of April, 1878, the said company ordered forfeited all stock on which the assessment had not been paid except that held by Mrs. McCabe, Dr. Ross, and Captain Hill, leaving about eight thousand four hundred dollars unpaid capital stock to finish the sinking of said shaft, pay the said indebtedness, and complete the said enterprise; that of that stock said Mary A. McCabe, Dr. Ross, and Capt. Hill, owing twelve hundred dollars of the same, are insolvent and unable to pay the same; that under the condition of said company the said capital stock forfeited is worthless; that the said The St. Louis and Sandoval Coal and Mining Company is insolvent and unable to complete the enterprise for which it was organized; that the said four acres of land and the mining rights of said company to certain lands and lots described in deeds of conveyance from sundry persons — Ozias Townsend and recorded in Deed Records Book D D of the records of said Marion county, commencing at page- 74 and 90, and by said Ozias Townsend conveyed to the St. Louis and Sandoval Coal and Mining Company, is all the property and effects of said company and is not of sufficient value to pay off and discharge said supposed indebtedness. It is therefore ordered, adjudged, and decreed by the court that George W. Wharton be, and he is hereby, appointed receiver of said The St. Louis and Sandoval Coal and Mining
420 Company, who is hereby authorized and empowered to take charge of all and singular the property, rights, credits, and effects, both personal and real, of said company, of whatsoever nature or kind, and sell the same at public or private sale, after giving due notice of the time and place of such sale as required by law, for cash, and make conveyances of such property to the purchaser or purchasers, conveying all the rights, title, claim, or demand of said The St. Louis and Sandoval Coal and Mining Company in and to such property to such purchaser or purchasers and convert said property into money and pay and discharge the said indebtedness, so far as the said property may or will pay and discharge such indebtedness, first reserving the costs and expenses of this suit and expenses of said sale and receivership, &c.; that he report to the next term of this court the amount of indebtedness of said company and his actings and doings as such receiver of said company, at which term an assessment be made against the solvent stockholders for any balance of indebtedness remaining unpaid after the sale of

said property and effects, and that said The St. Louis and Sandoval Coal and Mining Company be, and is hereby, dissolved and for not esteemed in law, and that this cause be continued to the next term of this court for the report of said receiver and assessment of said stockholders to pay balance indebtedness of said company.

Indorsed: Filed Aug. 15th, 1878. H. R. Hall, clerk. Entered in Book N, page 313.

421 *Report of Receiver.*

February Term, A. D. 1879.

FRANCIS H. EDWARDS, LAMBERT NOLAND, HENRY Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, & C. N. Rockwell
vs.
THE ST. LOUIS AND SANDOVAL COAL & MINING Company, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thomas B. Hill, Jos. Sheals, James Collins, John B. Mears, William H. Ross, True W. Blackman, George W. Wharton, & Elizabeth E. Townsend. } In Chancery.

Tuesday, February 11th, 1879, this cause is called, and now, on this day, comes again the complainants, by their solicitor, A. C. Goodnow, none appearing for defendants, and also comes Geo. W. Hered, receiver of the St. Louis and Sandoval Coal and Mining Co., appointed such at the Aug. term, A. D. 1878, of this court in this cause, and presents a report of his actings and doings as such receiver in said cause up to this date to the court; which report is as follows:

And now comes George W. Hered, the receiver of the St. Louis and Sandoval Coal and Mining Company, appointed as such by this honorable court at the August term, A. D. 1878, thereof, and makes the following report of his actings and doings as such receiver to this time: That after first advertising the lands, to wit, the south half of four acres on the north of the right of way of the Ohio and Mississippi railway and adjoining Primmer's addition to the town of Sandoval and running north as far as to Scott street, in said addition, and east far enough to contain four acres, with the
422 exception of the streets to be extended through the said four acres from said Primmer's addition eastward, in the west half of the northeast quarter section seventeen, town. two north, range one east, as deeded to said above-mentioned company by Samuel and Julia Ewing, of Sandoval, Ills., and also buildings, mining fixtures; also all rights and titles of the said St. Louis and Sandoval Coal and Mining Company in and to certain mining rights in certain lots and lands described in deeds to one Ozias Townsend, recorded in Book D D, commencing at page- 74 and 90, as required by law and said decree, I did, on the twenty-eighth day of

September, A. D. 1878, offer the said lands, mining fixtures, & mining rights above referred to at public sale at the place of mining operations of said company in Sandoval, in said county, to the highest bidder, for cash, and Isaac Main having bid the sum of two hundred dollars for said above-described land, fixtures, and mining rights of said company, and that being the highest and best bid therefor, the same was then and there struck off and sold to him for said sum, said purchase subject to the materialman's lien of Lichty & Steiner for the sum of one hundred thirty-one & $\frac{15}{100}$ dollars and costs of suit, and in pursuance of said sale a deed was then and there executed and delivered to said Isaac Main for said property so purchased.

He further reports that the just claims against said company which have been presented and which he believes are just are as follows: Frank Seymour, seventeen hundred six & $\frac{40}{100}$ dollars as per account herewith filed; claim of Lichty & Steiner, materialman's lien, is $131.15, which claim is to be paid by Isaac Main as aforesaid; that B. Gratz Brown holds a note of $200 and interest, which claim of said Brown your receiver desires to contest before allowing the same; that Andrew Roll also presents a claim of fifty dollars, which your receiver desires to contest before allowing same; that after notice given to all persons to present their claims against said company, the above are the only ones presented; that one F. W. Nodine has a claim of some thirty dollars for work done
423 for said company, but has not yet presented same; that Isaac Main also claims the sum of ninety-six $\frac{53}{100}$ dollars presented this day as per account herewith filed; that the whole liabilities of said company, including said claims your receiver wishes to contest, amounts to two thousand eighty-two $\frac{93}{100}$ dollars so far as presented and know- to your receiver at this time, exclusive of the costs and expenses of this receivership and costs of this proceeding; that the assets of said company are the said $200 obtained from the sale aforesaid and liability of the stockholders as follows:

Isaac Main,	10	shares	$950 00
Lamber- Noland,	1	do.	95 00
Henry Wellhoeuer,	50	do.	4,788 60
Frank Seymour,	2	do.	200 00
Charles Reinhardt,	5	do.	475 00
Jacob Lichty,	2	do.	190 00
C. N. Rockwell,	3	do.	285 00
Francis H. Edwards,	5	do.	475 00
Andrew Roll,	2	do.	200 00

The above are all considered good, and the following doubtful and not good:

Johnson A. Power,	2	shares	$200 00
Albert E. Ross,	1	do.	100 00
Mary A. McCabe,	10	do.	1,000 00
Thomas B. Hill,	1	do.	100 00
James Sheals,	10	do.	1,000 00

James Collins,	5 shares	$500 00
John B. Mears,	2 do.	200 00
Ozias Townsend,	286 do.	28,600 00

The stock said to be paid up is as follows:

Elizabeth Townsend,	50 shares	$5,000 00
George W. Wharton,	40 do.	4,000 00
True W. Blackman,	10 do.	1,000 00

424 Making the total assets forty-nine thousand seven hundred fifty-eight $\frac{60}{100}$ dollars, of which your receiver believes seven thousand eight hundred fifty-eight & $\frac{60}{100}$ dollars is good.

Expenses, &c.

Advertising sale of property	$15 00
Att'y fees	10 00

All of which is respectfully reported and asked to be approved and leave given to collect of the above-named stockholders by suit or otherwise, if necessary.

GEO. H. HERED, *Receiver.*

Answer.

(Indorsed:) "Refiled August 18th, 1880. H. R. Hall, cl'k."

In the Circuit Court, Marion County, Illinois, February Term, 1880.

EDWARDS *et al.*
vs.
THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et al.* } In Chancery.

The joint and several answer of Ozias Townsend, Mary McCabe, William H. Ross, John B. Mears, and Elizabeth Townsend to said bill of complaint.

These defendants, saving all right of exception to said bill, for answer thereto say that they admit the said St. Louis and Sandoval Coal & Mining Company was organized as stated in the bill, and that the persons named therein were the stockholders having the amounts respect*fully* set forth; they admit that the right to take out and dispose of coal was granted to said Ozias Townsend in trust by various persons, as set forth in the bill, and upon the terms and conditions stated; they admit that said company was organized on or about the 8th of December, 1877, as stated in the bill, and that it purchased two acres of land as set forth therein; they admit that the contract mentioned was entered into with the said Frank
425 Seymour, and that he commenced and prosecuted the work of sinking said shaft, as stated in the bill, but they deny that said company was in default in any manner in respect thereto, and insist that the said Seymour wrongfully suspended work upon said

shaft; they deny that said company was indebted to said Seymour, as stated in the bill, or that said company was indebted to the extent set forth; they deny that the board of directors of said company wrongfully acknowledged an indebtedness to said Ozias Townsend as set forth in the bill; they admit that paid-up stock was issued to said Elizabeth Townsend and True W. Blackman, as stated, but they insist that said company received full value for the same; they deny that any paid-up stock was issued to said George Wharton; they admit that an assessment was made on the capital stock of said company of five per cent., but they deny that any of the same remains unpaid by these defendants or that any stock was forfeited, as stated in the bill, and they deny that said company was indebted to said Frank Seymour at that time; they deny that any of said stockholders are insolvent; they deny that said company was insolvent or unable to prosecute the enterprise undertaken by it; they admit that said Wm. H. Ross, True W. Blackman, Elizabeth Townsend, and Frank Seymour became stockholders in said company after its organization by purchase from the said Ozias Townsend, but they deny that said George Wharton ever was a stockholder; they deny that the board of directors of said company was composed of the persons mentioned at the time said bill was filed; they admit that the mining rights, shaft building, and land of said company were valuable, and insist that they now are ample resources for any debts or demands against the same, but they deny that they constitute all the property and effects of the said company, their being a stockholders' liability of as least $30,000, which was available to meet its liabilities; they deny that said George Wharton was ever president or superintendent of said company, and finally they deny all allegations in said bill not already admitted or denied;

426 and these defendants insist that the complainants in the institution and prosecution of this suit, being stockholders and a portion — directors and officers of said corporation, are acting in bad faith and are seeking to embarrass and wreck the company instead of endeavering to promote and protect the interest of the stockholders thereof other then themselves with a view to acquiring its property and rights, which is inequitable and unjust to these defendants; and these defendants crave the same benefit from this answer as though they had demurred to said bill: and, now having fully answered, &c.

OZIAS TOWNSEND.
MARY A. McCABE.
WILLIAM H. ROSS.
JOHN B. MEARS.
ELIZABETH TOWNSEND.

M. MILLARD, *Sol. Def'ts.*

EDWARDS *et al.*
vs.
THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et al.*

Answer of the Company.

Filed August 15th, 1882.—R. H. Hall, cl'k.

In the Circuit Court of Marion County, Illinois, August Term, 1882.

FRANCIS H. EDWARDS *et al.*
vs.
THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et al.* } In Chancery.

The answer of the said St. Louis and Sandoval Coal and Mining Company to the bill of complaint herein.

427 The defendants, reserving all right to exception to said bill, for answer hereto says it is true said company was organized, as stated in the bill, for the purpose of sinking and operating a coal mine at the town Sandoval, Illinois, and that the right to mine coal in a large quantity of lands at and near said town was conveyed to the said Ozias Townsend in trust for said company, but said company purchased land of the said Samuel Ewing, as stated in the bill; that it made the contract with said Seymour, as stated in the bill; that he did a part of the work, as stated, but this defendant denies that it was indebted to him, or that the cost of sinking such shaft is as much as alleged, or that the said company's indebtedness was near three thousand dollars. This defendant also denies that it fraudulently acknowledged an indebtedness to the said Ozias Townsend or issued paid-up stock to him without a sufficient consideration or anybody else. It also denies that any legal assessment was ever made, or that any stock was declared forfeited, or that any of the stockholders were insolvent, or that the said company was insolvent or unable to attain the object of its organization, as charged in the bill. It admits that the said Wellhoeuer, Mears, and Main were directors, but denies that said Blackman and Wharton were. It admits that the property of said company was valuable and denies that it — insufficient to pay its debts or was in danger of suspension. It admits that all stock is liable for the payment of the said company's debts. It denies that the said George Wharton is president or ever was and admits the said Wellhouer was secretary at one time. It denies that the said company is or ever was unable to proceed with its enterprise, and insists that the complainants combined together to wreck the company and secure its property, and to accomplish that end frustrated all efforts to raise funds to carry on the work and deliberately planned a scheme of putting the company through the process of wind-

ing up its affairs and dissolving its corporate organization; that the prosecution of this suit is in furtherance of such aim
428 at complainants and is wholly unnecessary; that the president and a portion of the directors had furnished ample funds to carry the work to completion, but complainants succeeded in rendering their efforts useless by a course of action characterized by bad faith and in utter disregard of the rights of other stockholders; that the defendant is able, ready, and willing to meet all its liabilities and go on with its business and was always in a position to proceed with its work of sinking and operating its coal mine without any hindrance or embarrassment except such as the complainants were able to offer; and for a further answer this defendant says that since the filing of this bill an assessment was duly levied upon all the stockholders of the company to raise funds, and that all the stock held by all the complainants was regularly and legally forfeited except that of the said Henry Wellhoeuer, and that none of the other complainants now have any interest whatever in this proceeding; that in order to relieve them from any liability, as well as the other stockholders, the defendant is able and willing to pay all debts of the company, if any there are, and to that end will give adequate security or pay a sufficient sum of money into court, if equity requires it, or will do any other thing that may be necessary to protect complainants against loss, liability, or damage which shall be right and proper in the premises; and for a further answer the defendant says all of its debts have been paid, and that there is no pecuniary liability existing against the defendant at this time; and now, having fully answered said bill, the defendant prays that it may have the same benefit from this answer as though it had demurred to the bill, and that it may — herein dismissed with its costs, &c.

THE ST. LOUIS AND SANDOVAL
COAL AND MINING COMPANY.
M. MILLARD, *Sol.*

429 FRANCIS H. EDWARDS *et al.*
vs.
ST. LOUIS & SANDOVAL COAL & MINING CO. *et al.*

Decree.

Filed Aug. 17th, 1883.—H. R. Hall, clerk.

Cir. C't Record "P," page 167.

STATE OF ILLINOIS, } ss:
Marion County, }

In Circuit Court, February Term, 1883.

FRANCIS H. EDWARDS, LAMBERT NOLAND, HENRY Wellhoener, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, & Lucinda Rockwell
vs.
THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thos. B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, George W. Wharton, and Elizabeth E. Townsend. } Chancery.

And now, on this day, to wit, Monday, February 12th, A. D. 1883, came the complainants, by Schaeffer & Goodnow, their solicitors, and also came the defendants, by Millard & Young, their solicitors, and this cause, being ready for trial, came on for trial, and was heard by the court upon the bill, answers of defendants, The St. Louis and Sandoval Coal and Mining Company, Ozias Townsend, Elizabeth Townsend, Mary A. McCabe, William H. Ross, and John B. Mears, replications thereto, the default of defendants
Andrew Roll, Johnson A. Power, Albert E. Ross, Thomas
430 B. Hill, James Sheals, James Collins, True N. Blackman, and
George W. Wharton, records, exhibits, depositions and oral evidence, deeds, letters, books therein taken by E. L. Stoker, special master, and read on the hearing of this cause at February term, A. D. 1881, as per stipulation of file herein, and the court, having heard the evidence, takes this cause under advisement, to be argued by counsel in vocation: and afterwards, to wit, July 14th, 1883, at chambers, the court hears the argument of counsel and, being fully advised herein, doth find that the allegations in the bill are sustained by the evidence, and that the court has jurisdiction of the parties hereto and the subject-matter; that the St. Louis and Sandoval Coal & Mining Company, about the tenth day of March, A. D. 1878, ceased to prosecute the work for which it was organized, leaving debts unpaid to complainant Frank Seymour and other- to the amount of two thousand one hundred dollars; that the business of said St. Louis & Sandoval Coal & Mining Company was mismanaged by its officers; that said company is insolvent, and that it would be useless for said company to resume business on account

of its financial embarrassments. It is therefore ordered, adjudged, and decreed by the court that the defendant The St. Louis and Sandoval Coal and Mining Company be, and the same is hereby, dissolved and for nothing esteemed in law, and the appointment of George W. Hered as receiver of said defendant, The St. Louis and Sandoval Coal and Mining Company, by the court at the August term, A. D. 1878, of this court be, and the same is hereby, approved and confirmed, and he is ordered to make further report of his actings and doings herein as such receiver; whereupon the defendants pray an appeal to the supreme court of the State of Illinois, southern grand division. It is therefore further ordered and decreed by the court that the said defendants, any or either of them, be allowed to appeal this cause to the said supreme court upon filing bond, in the penal sum of one thousand dollars, payable to
431 complainants, conditional according to law, with good and sufficient surety, to be approved by the clerk of this court, within thirty days from the filing of this decree in the said circuit court.

FRANCIS H. EDWARDS *et al.*
vs.
THE ST. LOUIS & SAN. COAL & MINING CO. *et al.*

2nd Report of the Receiver.

Filed February 4th, 1885.—J. B. Lewis, clerk.

Circuit Court of Marion County, Ill., February Term, A. D. 1885.

FRANCIS H. EDWARDS *et al.*
vs.
THE ST. LOUIS & SANDOVAL COAL & MINING CO. *et al.* } Bill in Chancery.

Monday, February 9th, 1885.—This cause is called, and now comes the receiver of the St. L. and S. C. & Mg. Co. and makes his report herein; which said report is in the words and figures following, to wit:

And now comes again George W. Hered, the receiver appointed in the above-entitled cause by the circuit court of *the* Marion county, Illinois, at its August term, 1878, and, in addition to the report which he made and filed in said court and cause on the 11th day of February, 1879, he will further report that immediately after the sale of the property of said St. Louis and Sandoval Coal and Mining Company to Isaac Main, as before reported to this court in the report above mentioned, he gave to said Main the possession of all the property so sold to said Isaac Main, and that since that time he had done nothing further with said property nor anything else to settle the debts of said
432 St. Louis and Sandoval Coal and Mining Co npany; that the said company had no means by which the mining shaft could have been completed; that he afterwards learned that the said

Isaac Main had sold said property to the Sandoval Coal and Mining Company and had realized enough therefor to pay all the debts of the St. Louis and Sandoval Coal and Mining Co., and that such debts were all paid and discharged by said Sandoval Coal and Mining Company; therefore I concluded that there was nothing further for me as such receiver to do, and I made no effort to collect anything from the supposed solvent stockholders, and have received nothing as such receiver since my former report. I was informed and believe that immediately after the said sale by Main to the Sandoval Coal & Mining Company the said last-mentioned company took possession of said property and sunk the shaft and is now in possession thereof and operating it as a coal mine, which, as this receiver is advised, the said St. Louis and Sandoval Coal & Mining Company was financially unable to do, any none of its officers or stockholders ever offered to furnish any money to this receiver to complete the shaft or for any other purpose nor did they or any of them, so far as this receiver knows, concern themselves about said property or take any interest in the same except the said Main, who seemed anxious only that the few solvent stockholders should be saved from their liability for the debts of the St. Louis & Sandoval Coal & Mining Company. None of them ever suggested to this receiver that he could do anything with said property except to sell the same.

All of which is respectfully submitted.

G. W. HERED,
Receiver St. L. & S. C. & M. Co.

433 EDWARDS *et al.*
vs.
ST. LOUIS & SANDOVAL COAL & MINING CO. *et al.*

Supplemental Bill.

Filed February 4th, 1885.—J. B. Lewis, clerk.

Circuit Court of Marion County, Illinois, February Term, A. D. 1885.

FRANCIS H. EDWARDS *et al.*
vs.
ST. LOUIS & SANDOVAL COAL & MINING CO. *et al.* } Supplemental Bill.

To the hon. judge presiding at the Feb. term of the circuit court of Marion county, Ill., A. D. 1885:

The surviving complainants in the above-entitled cause comes and, by leave of court first had, show unto the court that Francis H. Edwards, one of the complainants, departed this life testate in the year 1883, as was suggested on the record of this court at a former term of this court, and now, by consent of Margaret E. Edwards, his executrix, duly appointed by the county — of said Marion

county, she, the said Margaret E. Edwards, as such executrix, comes in the place of said Francis H. Edwards, and with the other complainants presents to the court this their supplemental bill, making the Sandoval Coal and Mining Company of Marion county, Illinois, an additional defendant in the above-entitled cause; and the complainants herein show unto your honor that after the decree in said cause entered at the August term, 1878, of this court, by which George W. Hered was appointed receiver of said St. Louis & Sandoval Coal & Mining Company, with power and authority to take charge of all and singular
434 the property, right, credits, and effects, both personal and real, of whatever nature or kind, and sell the same at public or private sale, and make conveyance of such property to the purchaser as fully appears from said decree, and after the said George W. Hered as such receiver had sold the said property to one Isaac Main, as shown by the report herein of said receiver filed in this cause on the 11th day of February, 1879, and approved by this court at its February term, A. D. 1879, as fully appears from said report and decree of this court, to which reference is asked to be made, to wit, in the year 1879, the defendant, Sandoval Coal & Mining Company, were duly incorporated under the laws of the State of Illinois, and after such incorporation the said Sandoval Coal & Mining Company purchased from the said Isaac Main all the real estate and mining rights and property so sold by the said receiver to said Main as aforesaid, and received a deed of conveyance for and to the same; and the said Sandoval Coal & Mining Company then, in 1879, took possession of said property by virtue of such conveyance to it by said Main and has been in possession thereof ever since then, and is now in possession thereof, and claims title therein by virtue of such deed, as these complainants are advised and believe; and these complainants further show unto your honor that the said Sandoval Coal & Mining Company has sunk a coal shaft on said land and made other valuable permanent improvements on said land, and has made said property valuable, which was comparatively valueless where it purchased it and took possession of it, and it, the said Sandoval Coal & Mining Company, has also paid a large sum of money to discharge the indebtedness of said St. Louis & Sandoval Coal & Mining Company existing at the time of such purchase from said Main. These complainants further show unto your honor that at the August term, 1883, of this court the said St. Louis & Sandoval Coal & Mining Company brought an action of ejectment against the said Sandoval Coal & Mining Company for the said property, and at said August term, 1883, said
435 ejectment suit was tried and judgment entered for the defendant, from which an appeal was taken to the supreme court of this State, at the November term, 1883, of said supreme court; and afterwards, to wit, in September, 1884, the said judgment was reversed, and at the Nov. term, 1884, of said supreme court an order was made to remand said ejectment suit to this court for a new trial, which will fully appear from the order and opinion of said supreme court, to which reference is to be made, and as the

supreme court holds that the legal title to said property is not in said Sandoval Coal and Mining Company for the want of proper service when the order of sale was made, it is important and necessary to make said Sandoval Coal & Mining Company as def't herein, so that it may present its equitable claims to and in said property for adjustment, and that further proceedings in said ejectment suit be stayed and enjoined until such equitable rights are adjusted, and, further, that any and all other suits and proceedings by said St. Louis & Sandoval Coal & Mining Company in reference to or concerning said property be stayed or consolidated with this suit until this suit is fully determined.

These complainants therefor- pray that the said Sandoval Coal & Mining Company may be made a party def't to this suit, and that it may be summoned to appear and answer, its oath being expressly waived, and show what interest, if any, it has in or to said property in law or in equity, and that all the other def'ts may answer this sup. bill, and that all other suits or proceedings by said St. Louis & Sandoval Coal & Mining Company for or in reference to said property, including said ejectment suit, a bill in equity filed in this court *vs.* said Sandoval Coal & Mining Co., and an addition for trespass against James S. Martin and others, be stayed or dismissed for want of leave to bring such suit; and will your honor grant such other and further relief as the nature of the case may require and to justice and equity shall seem meet.

MARGARET E. EDWARDS,
Executrix of Francis H. Edwards, Dec'd,
436 LAMBERT NOLAND,
HENRY WELLHOEUER,
FRANK SEYMOUR,
CHARLES REINHARDT,
ISAAC MAIN,
JACOB LICHTY,
MRS. L. N. BOCKWOL, *Adm.*,
By M. SCHAFFER AND
H. C. GOODNOW, *Their Solicitors.*

STATE OF ILLINOIS, } *ss:*
Marion County, }

M. Schaffer, being duly sworn according to law, says that he is att'y for the complainants in the foregoing supplemental bill and that the matters and things set up or stated in said supplemental bill are true in substance and in fact, and so far as they are stated on information and belief he believes them to be true.

M. SCHAEFFER.

Subscribed and sworn to before me this 4th day of February, A. D. 1885.

J. B. LEWIS, *Clerk.*

FRANCIS H. EDWARDS *et al.*
vs.
ST. LOUIS & SANDOVAL COAL & MINING CO. *et al.*

Answer of Sandoval Coal & Mining Company to Supplemental Bill.

Filed February 9th, 1885.—J. B. Lewis, clerk.

Circuit Court of Marion County, Ill., February Term, A. D. 1885.

437 FRANCIS H. EDWARDS *et al.*
vs.
THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et al.*

And now comes the Sandoval Coal and Mining Company (hereinafter named the new company), made a def't in the above-entitled cause by supplemental bill filed at this term of court, and answers to said supplemental bill. And this def't, answering, says that it is true that this def't was duly incorporated under the laws of this State, substantially as stated in said bill.

And it is also true that this defendant purchased from one Isaac Main and received a deed from said Main & wife for the property in bill mentioned, to wit: The south half of four acres of land on the north side of the right of way of the O. & M. R. W. and adjoining Primmer's addition to the town of Sandoval and running north as far as Scott street in said addition and east far enough to contain four acres, with the exception of the street to be continued through said four acres from said Primmer's addition eastward in the west half of the northeast quarter of section seventeen, town. two north, range one east; and also the mining rights or royalty in and to certain lands and lots conveyed by sundry persons to Ozias Townsend and described in such deeds recorded in Book D D, commencing at page 74 and 90 of Deed Records of said county, and conveyed to the St. Louis & Sandoval Coal and Mining Company, and by George W. Hered, receiver, to ——, situated in the county of Marion and State of Illinois, which convevance by said Main & wife was made in consideration of the sum of $2,465.30 paid by this def't; and this def't further says that before said purchase was made by it from said Main it found, upon examination of the records of this court and the records of this county, that this suit of Francis H. Edwards *et al. vs.* The St. Louis & Sandoval Coal & Mining Company *et al.* was pending, and that at its August term, 1878, this court, after finding in its decree that proper service was had on
438 said St. Louis & Sandoval Coal & Mining Company (which for convenience will hereafter herein be called the old company) appointed one George W. Hered receiver of said old company and authorized and empowered him to take charge of all and singular the property, right, credits, and effects, both personal and real, of said old company of whatever nature and kind, and sell the same at public or private sale, after giving due notice of the time and place of such sale as required by law, for cash and make convevance of such property to the purchaser or purchasers, conveying all the right, title, claim, or demand of said old company in and

to such property to such purchaser or purchasers, as will fully appear from such decree herein. It is further found from said records and the report of the receiver that the said receiver had advertised and sold said property as directed by this court in said decree, and that one Isaac Main had purchased said property at said receiver's sale, and that the sale was approved by this court at its Febr'y term, 1879, and that the said receiver made a deed to said Main for said property, describing the property correctly.

And this def't, this new company, further answering, says that, finding the said records and proceedings as above stated, it purchased the said property in good faith, believing at the time that it was getting a perfect title for the same, and paid for said prope ty all it was then worth, and that said Main out of said purchase-money paid the debts of said old company, so as to keep himself and other solvent stockholders of said old company harmless, and, as this def't is informed and believes, it took all such purchase-money to pay the debts of said old company, and this def't charges that the old company and its officers and stockholders knew that the said Main had thus made a contract with the new company by which he was to convey said property to said new company, in consideration whereof the said new company was to pay enough to pay and discharge the then existing debts of the
439 said old company. No objection was then made nor was any claim to the property presented by said old company until some four years after said purchased by the new company from Main as aforesaid; and the said new company further says that at the time of its said purchase of said property there had been a shaft sunk on said two acres of land to the depth of about 114 feet, which had been abandoned and was partly filled with water, and immediately after said purchase the said new company took possession of said property and proceeded to sink said shaft, and did sink the same to the depth of over six hundred feet, when a vein of coal of nearly six feet in depth was found some time in the fall of 1879, and that the said new company has ever since its purchase as aforesaid had and still has possession of said shaft and two acres; and this def't charged that the said old company has never sunk said shaft or any other shaft or offered to do so to any paying vein of coal or to any vein of coal or in any other way or manner, except to the depth of about 114 feet as aforesaid, and that said 114 feet did not reach any such vein of coal, and therefore the so-called mining rights and royalty conditionally conveyed by sundry persons to said Ozias Townsend in trust, &c., and by him to said old company were wholly lost, forfeited, and found to be of no value or force or virtue. The condition upon which they were granted not having been complied with by said old company and this defendant, the new company, charges that the said old company has no interest in or right to any mining rights or royalty or to any coal outside of the two acres of land on which said coal shaft was sunk as aforesaid, and that the said new company purchased and received conveyance for all the coal, with the rights to mine such coal which it has taken outside of said two acres from the owners of such coal,

who are also the owners of the land under which such coal was found, and that the coal taken by this def't from and under said two acres is not a large quantity.

And this def't, the new company, further shows unto
440 your honor that after its purchase of said property from said Main as aforesaid, and before the said old company presented any claim to said property or pretended to said new company that said old company had any such claim, the said new company expended on said two acres in the way of permanent improvements, which were necessary to fit said two acres for the use for which it was intended, to wit, mining coal, a large sum of money in addition to the $2,465.30 purchase-money, which went to pay the debts of said old company as aforesaid, to wit: For sinking the coal shaft, $15,000.00; for office building, about $200.00; for boiler-house, about $350.00; for an engine-house, about $500.00; for other permanent fixtures, about $9,500.00; for sundry incidental expenses, about $1,400.00; for compensation of officers and directors and their expenses in directing the work on said shaft, building, &c., about $3,000.00; interest on the amount of money invested in the property in controversy, some $4,000.00. All of which expenditures were necessary to make said property suitable and available for the purposes for which it was intended, and without such improvements, buildings, fixtures, the said property would be — very little value. This defendant further says that all the coal that it took out from under said two acres of land does not exceed — tons, and that its net value above the expenses of mining and hoisting, &c., is not to exceed the aggregate sum of five hundred dollars.

That the main part of the coal which this defendant has taken out through said coal shaft was taken from lands, lots, and streets other than the two acres aforesaid, to which coal and the right to mine the same the said defendant obtained the right from the true owners thereof, and to which the said old company has no valid right or title and never had; and that since the defendant was notified by persons claiming to represent said old company that said old company claimed to have title to said property the said defendant has taken no coal from said two acres nor from any
441 other property or any other coal to which said old company had any valid claim or title.

And this defendant, further answering, says that it is informed and believes that the only parties who are or have been contesting the claim and title of this def't to said property are the def'ts Ozias Townsend, Mary A. McCabe, William H. Ross, John B. Mears, and Elizabeth Townsend, who, as this court has already found and determined, have no valid stock in said old company, and yet are using the name of said old company to harass, cheat, and defraud this respondent, and *all* that the valid stockholders in said old company who have paid anything on their stock consented to the purchase and sale of said property by said Main as aforesaid and are now willing that this defendant's title should be perfected by the order of this court; and, therefor-, this defendant presents herewith its cross-bill asking for affirmative relief, and,

having fully answered said supplemental bill, it prays to be discharged with its costs, &c.

SANDOVAL COAL & MINING COMPANY,
By M. SCHAEFFER, *Its Att'y.*

SANDOVAL COAL & MINING COMPANY
vs.
ST. LOUIS & SANDOVAL COAL AND MINING COMPANY *et al.*

Cross-bill in the Case of Francis H. Edwards et als. — The St. Louis & Sandoval Coal & Mining Company et al.

Filed February 9th, 1885.—J. B. Lewis, clerk.

Circuit Court of Marion County, Illinois, February Term, A. D. 1885.

442 THE SANDOVAL COAL & MINING COMPANY
vs.
THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY, ANDREW ROLL, MARGARET E. EDWARDS, Executrix of Francis H. Edwards, Dec'd; JAMES A. POWER, ALBERT E. ROSS, MARY A. McCABE, LAMBERT NOLAND, OZIAS TOWNSEND, HENRY WELLHOEUER, ELIZABETH TOWNSEND, FRANK SEYMOUR, THOMAS B. HILL, CHARLES REINHARDT, JAMES SHEALS, ISAAC MAIN, JAMES COLLINS, JACOB LICHTY, JOHN B. MEARS, MRS. L. N. ROCKWELL, Administratrix of Estate of C. N. Rockwell, Dec'd; WILLIAM H. ROSS, TRUE N. BLACKMAN, GEORGE W. WHARTON.

Cross-bill in the case of Francis H. Edwards *et als. vs.* The St. Louis & Sandoval Coal & Mining Co. *et als.*

To the honorable judge presiding in the circuit court of Marion county, Ills., at its February term, 1885, in chancery sitting:

Your complaina-ts, The Sandoval Coal and Mining Company, hereinafter for convenience called the new company, of the county of Marion and State of Illinois, being a corporation duly incorporated under the laws of said State of Illinois and doing business in said county and State, having its principal business office in the village of Sandoval, in said county and State, shows unto your honor that at the August term, 1878, one Francis H. Edwards, whose executrix, Margaret E. Edwards, is made a def't herein, and the defendants Lambert Noland, Henry Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and C. N. Rockwell, then living, but now dead, presented to this court their bill in chancery *vs.* the defendants herein, The St. Louis & Sandoval
443 Coal & Mining Company, which is hereinafter for convenience called the old company, and the other defendants herein, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, and George Wharton, for the appointment of a

receiver, dissolution of a corporation, and relief, which cause was and is entitled Francis H. Edwards *et als. vs.* The St. Louis & Sandoval Coal & Mining Company *et als.*; that the bill in said cause, among other things, states and charges in substance that said old company was incorporated under the laws of the State of Illinois in Dec., 1877, for the purpose of mining and selling coal; that its capital stock was $50,000 in shares of $100 each, subscribed as follows: Isaac Main, $1,000; Lambert Noland, $100; Jacob Lichty, $200; C. N. Rockwell, $300; Andrew Roll, $200; Charles Reinhardt, $500; Francis H. Edwards, $500; Johnson A. Power, $200; Henry Wellhouer, $5,000; Albert E. Ross, $100; Mary A. McCabe, $1,000; Ozias Townsend, $39,300; Thomas B. Hill, $100; James Sheals, $1,000; James Collins, $500, and John B. Mears, $200.

Bill further avers that in Nov., 1877, certain land-owners conveyed to said Ozias Townsend, in trust for said old company, *to* the royalty & rights to mine coal on condition that a coal shaft would be sunk by said old company to a paying vein of coal within two years from Dec. 8th, 1877, otherwise such conveyances to be void, as it appears from said deeds recorded on the records of said Marion county, Book D D, page- 74 & 90, and that said Townsend conveyed the same to said old company; that said stockholders elected five directors of said Co. on Dec. 8th, 1877, to wit, Ozias Townsend, John B. Mears, Henry Wellhouer, Isaac Main, and James Sheals, all of whom except Main resided in St. Louis, Mo.; that said directors elected Ozias Townsend president & superintendent, and John B. Mears secretary; that in January, 1878, said old company purchased
444 from one Samuel Ewing two acres of land in or near the village of Sandoval, Marion Co., Ill., on which to sink a coal shaft and erect necessary buildings, as appears by deed recorded on the records of Marion Co., Ills., in Book 23, page 352, and afterwards, on the 10th of January, 1878, the said old Co. entered into a contract with one Frank Seymour to sink a coal shaft on said land for the purpose of mining coal; the shaft to be sunk as deep as 650 feet from the surface of the ground unless a paying vein of coal was sooner found; the work to commence on the 21st of January, 1878, and continue day and night until the whole job was done. The size of the shaft and manner of construction are fully specified in said contract, a copy of which is filed with said bill and is asked to be referred to here. The said old company was to furnish an engine and engineer to run the same and pay said Seymour $18 per foot for sinking said shaft, to be paid each month as the work progressed, all of which will fully appear from said bill and the contract which is made a part of said bill.

Said bill further avers that said Seymour commenced sinking said shaft, as agreed, and sunk the same 114 feet by March 10th, 1878; that said old company failed to pay him and failed to furnish engine, &c., as provided by its contract; that work then stopped and was never resumed by said old company on account of the misconduct of its officers; that there was then due to said Seymour about $1,700 and the whole contract price for sinking said shaft was about $10,800, and that said old company had debts then

due amounting to about $3,000, including said indebtedness to Seymour; that said old company ceased doing business, leaving this large indebtedness, and was insolvent and unable to complete its contract with Seymour; that said directors except Main fraudulently voted a credit to said Ozias Townsend of ten thousand dollars for pretended labor and money furnished and performed by him when no such labor was ever performed by him nor any money furnished by him or expended by him for such company.

445 And that said Ozias Townsend as such president fraudulently issued what purported to be paid-up stock certificates to his wife, Elizabeth Townsend, $5,000; to George N. Wharton $4,000, and to True N. Blackman $1,000, for which the said Elizabeth Townsend, George N. Wharton, and True N. Blackman paid nothing to said old company. Said bill further charges that in February, 1878, an assessment of five per cent. on the capital stock of said old company was made by said directors, and that the said Main, Noland, Lichty, Rockwell, Reinhardt, Edwards, and Wellhouer promptly paid their respective assessments, but none of the other pretended stockholders paid any part of such assessment except said Seymour, who had a claim against said company and was willing to credit such assessment on his claim; and afterwards, in April, 1878, the said company, by its board of directors, declared forfeited all such stock on which the assessments had not been paid except that held by Mrs. McCabe, Dr. Ross, and Capt. Hill; that said forfeited stock should be sold, but would bring nothing; that, in addition to the persons who originally subscribed for such stock, W. H. Ross, True N. Blackman, Elizabeth E. Townsend, George N. Wharton, and Frank Seymour obtained certificates of stock from said Ozias Townsend, none of whom except said Seymour, who had but two shares, paid anything for their stock; that at the time of filing said bill True N. Blackman, George N. Wharton, Henry Wellhoeuer, John B. Mears, and Isaac Main were directors of said company, all of whom except said Main reside in St. Louis, Mo.; that said Main lives in Sandoval, Marion county, Ill.; that said old company has no property except said two acres of land and the conditional mining rights, which will be forfeited if said shaft is not sunk by said old company within two years from Nov., 1877; that said Ozias Townsend, Elizabeth Townsend, Albert E. Ross, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William N. Ross, True N. Blackman, and George W. Wharton are worthless and unable to pay assessments made on stock which they have in said old company and were insolvent at the time they took such

446 stock.

Bill further charges that said George N. Wharton is president and Henry Wellhoeuer secretary of said old company, and that under the conditions of said company and the worthless stockholders owning unpaid stock in said company it is useless for said company to attempt to resume business or attempt to complete its enterprise, and that the affairs of said old company should be wound up and said corporation dissolved; prays for process and answer and for the appointment of a receiver to take charge of all the prop-

erty of said old company, convert it into money and pay Co.'s indebtedness, and this Co. be dissolved, &c.; and this complainant, the new company, further shows unto your honor that at the said August term, 1878, in said cause of Francis H. Edwards *et als. vs.* The St. Louis and Sandoval Coal & Mining Company *et als.*, this court found and decreed substantially as follows: And now, on this day, came the complainants, by Henry C. Goodnow, their solicitor, and its appearing to the court from the writ issued to the sheriff of Marion county and the return thereon that the defendants The St. Louis and Sandoval Coal & Mining Company, Andrew Roll, and Johnson A. Power had been regularly served with process herein at least ten days prior to the first day of the present term of this court; and it further appearing to the court here from the affidavit on file that said defendants, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, George W. Wharton, and Elizabeth E. Townsend, are non-residents of the State of Illinois, and that their place of residence is St. Louis, State of Missouri, and that due notice of the pending of this proceeding has been given by publication for at least four weeks successively, in accordance with the statute in such case made and provided, by notice in the Salem Advocate, a public newspaper published in Marion county, Illinois, the first insertion having been made June 27th, 1878,
447 at least forty days prior to the 1st day of the present term of this court, and by mailing notice thereof to the address of the defendants within ten days of the first publication of said notice, a rule is entered that said defendants answer the said bill of complaint by the first Tuesday of this term of court.

And now, again, on the 13th day of August, 1878, came the complainants, by their solicitor, and the above rule having expired and all of said above-named defendants except Andrew Roll, having been severally three times called in open court to plead, answer, or demur to the complainants' bill, came not, but herein make default. It is therefore ordered, adjudged, and decreed that the same be taken as confessed against the said St. Louis & Sandoval Coal and Mining Company, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, George N. Wharton, and Elizabeth Townsend. August 15th, 1878, this cause is again called. Came the complainants, by their said solicitor, and the defendant Andrew Roll withdraws his said answer to said bill of complaint and makes default. It is therefore ordered, adjudged, and decreed that the said bill of complaint be taken as confessed against the said def't, Andrew Roll, and thereupon this cause came on for hearing upon the bill so taken as confessed by said defendants and the exhibits and records referred to in bill, and the court, being fully advised in the premises, doth find that the allegations in said bill contained are true as therein stated; that the court has jurisdiction of the subject-matter and has jurisdiction of the parties complainants and defendants in this cause, and that the said St. Louis & Sandoval Coal & Mining Company was duly organized

under the laws of Illinois for the purpose of mining coal, selling, delivering, and contracting the same, with a capital stock of $50,000, the said complainants and defendants being the stockholders for the respective amounts charged in the bill of complaint; that said company purchased of one Samuel Ewing
448 the south half of four acres on the north of the right of way of the O. & M. R. W. and adjoining Primmer's addition to the town of Sandoval and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the street to be continued through the said 4 acres from said Primmer's addition eastward, in the W. ½ N. E. ¼, section 17, T. 2 N., R. 1 east, in the county of Marion and State of Illinois, on which to sink a coal shaft, and entered into a contract with complainant Frank Seymour to sink said shaft for the consideration of ten thousand eight hundred dollars.

That in pursuance of said agreement said Frank Seymour commenced sinking a coal shaft upon said premises and continued such work to about the 10th day of March, 1878, at which time, in consequence of the misconduct of said company, the said work stopped and has not been resumed since, and that the balance due to said Seymour from said company is about seventeen hundred dollars for said work; that the whole amount of indebtedness due on said 10th day of March, 1878, is some $3,000; that some time between the 23rd day of March, 1878, and the 6th of April, 1878, the directors of said company fraudulently acknowledged an indebtedness of ten thousand dollars to said Ozias Townsend, which said $10,000, if he desired, should be endorsed upon the stock held by him as a member of said company; that afterwards the said Ozias Townsend had issued to his wife, Elizabeth Townsend, $5,000 paid-up stock in said company upon said pretended indebtedness, four thousand to said George N. Wharton, and $1,000 to True N. Blackman, making the said $10,000, for which the said Elizabeth E. Townsend, George N. Wharton, and True N. Blackman paid nothing to said company; that on the 14th of February, 1878, an assessment of five per cent. on said capital stock was made and the stockholders, Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Reinhardt, Francis H. Edwards, Henry Wellhoeuer, and Frank Seymour, promptly paid. The balance of said stockholders re-
449 fused and failed to pay said assessment, and afterwards, on the 29th day of April, 1878, the said company declared forfeited all stock on which the assessment had not been paid except that held by Mrs. McCabe, Dr. Ross, and Captain Hill, leaving about $8,400 unpaid capital stock to finish the sinking of said shaft, pay the said indebtedness, and complete the said enterprise; that the said stock-, Mary A. McCabe, Dr. Ross, and Capt. Hill, owing twelve hundred dollars of the same, are insolvent and unable to pay the same; that under the condition of said company the said capital stock forfeited is worthless, the St. Louis and Sandoval Coal & Mining Company is insolvent and unable to complete the enterprise for which it was organized; that said two acres of land and the mining rights of said company to certain lands and lots described in deeds of conveyance from sundry persons to Ozias Townsend and re-

corded in Deed Record Book D D of the records of said Marion county, commencing on pages 74 and 90, is all the property and effects of said company and is not worth sufficient value to pay off and discharge said supposed indebtedness.

It is therefore ordered, adjudged, and decreed by the court that George W. Hered be, and he is hereby, appointed receiver of said St. Louis & Sandoval Coal and Mining Company, who is hereby authorized and empowered to take charge of all and singular the property, rights, credits, and effects, both personal and real, of said company, of whatever nature or kind, and sell the same at public or private sale, after giving due notice of the time and place of such sale as required by law, for cash, and make conveyance of such property to the purchaser or purchasers, conveying all the right, title, claim, or demand of said St. Louis and Sandoval Coal & Mining Company in and to said property to such purchaser or purchasers and convert said property into money and pay and discharge the said indebtedness so far as the said property may or will
450 pay and discharge such indebtedness, first reserving the costs and expenses of this suit and expenses of said sale and receivership, &c.; that he report to the next term of this court the amount of indebtedness of said company and his actings and doings as such receiver of said company, at which term an assessment will be made against the solvent stockholders for any balance of indebtedness remaining unpaid after the sale of said property and effects, and that said St. Louis and Sandoval Coal & Mining Company be, and is hereby, dissolved and for naught esteemed in law, and that this cause is continued for report of said receiver and assessment of said stockholders to pay balance of indebtedness of said company.

And your complainant further shows unto your honor that at the Febr'y term, 1880, of this court the said Ozias Townsend, Mary A. McCabe, William H. Ross, John B. Mears, and Elizabeth Townsend, who were served by publication of notice in said cause of Francis H. Edwards *et als. vs.* The St. Louis & Sandoval Coal & Mining Company *et als.*, presented their petition in said cause, asking leave to file their answer to said bill and have a hearing of said cause, &c. Leave was then and there given to them by this court to file such answer, &c. Their answer was then filed, in which they deny some of the material allegations in the bill, to which a replication was filed by the complainants in said bill; and afterwards, to wit, at the Febr'y term, 1881, in said cause proceedings and decree were had and rendered in substance following, to wit:

"And now, on this day, Febr'y 14th, 1881, leave is given to open depositions; and now again, on the 22nd day of February, 1881, come the complainants, by their solicitors, also come the defendants Ozias Townsend, Mary A. McCabe, William H. Ross, John B. Mears, and Elizabeth Townsend, by their solicitors, M. Millard & Young, and this cause, being ready for trial, came on to be heard as against these defendants on bill, answer of said defendants, replications thereto, exhibits, records, depositions, and oral proofs taken

by E. L. Stoker, special master appointed by the court to
451 take down the same, and the court, being fully advised therein, doth order, adjudge, and decree that the original decree made at the August term, A. D. 1878, of this court in this cause stand confirmed as against said defendants so answering, with costs, and that the complain-ts recover costs against said defendants." And this complainant further shows unto your honor that at the Feb'ry term, 1879, of this court in said original cause the said receiver reported in substance as follows: "That after first advertising the lands" (describing them as above), "and also the buildings, mining fixtures, and all rights and titles of said St. Louis & Sandoval Coal & Mining Company in and to certain mining rights in certain lots and lands described in deeds to one Ozias Townsend, recorded in Book D D, commencing on pages 74 & 90, as required by law and said decree, I did, on the 28th day of September, 1878, offer the said lands, fixtures, and mining rights above referred to at public sale at the place of mining operation of said company, *is* Sandoval, in said county, to the highest bidder for cash, and Isaac Main having bid the sum of two hundred dollars for said above-described land, fixtures, and mining rights of said company, and that being the highest and best bid therefor, the same was then and there struck off and sold to him for said sum, said purchase being subject to the materialman's *lein* of Lichty & Steiner for the sum of $131.15 and costs of suit.

And in pursuance of said sale a deed was then and there executed and delivered to said Isaac Main for said property so purchased."

This report was approved by this court at its said February term, 1879, and said receiver was ordered to collect from solvent stockholders enough to pay indebtedness of said old company.

And this complainant further shows unto your honor that at the May term, 1882, of the supreme court of this State the defendant
The St. Louis and Sandoval Coal and Mining Company alone
452 took said original cause and said decree entered in said cause by this court at its August term, 1878, to said supreme court by writ of error, and that a hearing was then and there had before said supreme court; and afterwards, to wit, on the 21st day of June, 1882, the said supreme court entered an order and decree in said cause in substance as follows, to wit: "On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now fully advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid and in the rendition of that part of the decree appointing a receiver will be affirmed, and in the residue of the decree aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the residue of the decree of the circuit court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit

court for such other and further proceedings as to the law and justice shall appertain."

And this complainant further shows unto your honor that the foregoing order of partial reversal was filed in this court on, to wit, the 13th day of August, 1882, and that at the same time was filed and answer to said original bill by the said St. Louis & Sandoval Coal & Mining Company, by M. Millard, its solicitor, in which answer many of the allegations are denied, and to which answer a general replication was filed by the complainants; and afterwards, at the Febr'y term, 1883, of this court, proceeding-, findings, and decree were had and rendered in said cause by this court in substance as follows, to wit: "And now, on this day, to wit, Monday, Febr'y 12th, 1883, came the complainants, by Schaeffer & Goodnow, their solicitors, and also came the defendants, by Millard & Young, their solicitors, and this cause, being ready for trail. came on for trial and was heard by the court upon the bill, answers of the defendants
453 The St. Louis & Sandoval Coal & Mining Company, Ozias Townsend, Elizabeth Townsend, Mary A. McCabe, William H. Ross, and John B. Mears and replications thereto, the default of the defendants Andrew Roll, Johnson A. Power, Albert E. Ross, Thomas B. Hill, James Sheals, James Collins, True N. Blackman, and George N. Wharton, records, exhibits, depositions and oral evidence, and letters taken by E. L. Stoker, special master, and read on the hearing of this cause at Febr'y term, 1881, as per stipulation on file herein, and the court, having heard the evidence, takes this cause under advisement, to be argued by counsel in vocation; and afterwards, to wit, July 14th, 1883, at chambers, the court hears argument of counsel, and, being fully advised herein, doth find that the allegations in this bill are sustained by the evidence, and that the court has jurisdiction of the parties hereto and the subject-matter; that the St. Louis & Sandoval Coal & Mining Company, about the 10th day of ——, 1878, ceased to prosecute the work for which it was organized, leaving debts unpaid to complainant Frank Seymour and others to the amount of two thousand and one hundred dollars; that the business of said St. Louis & Sandoval Coal & Mining Company was mismanaged by its officers; that said company is insolvent, and that it would be useless for said company to resume business on account of its financial embarrassments. It is therefore ordered, adjudged, and decreed by the court — the defendant The St. Louis & Sandoval Coal & Mining Company be, and the same is hereby, dissolved and for nothing esteemed in law, and the appointment of George W. Hered as receiver of said defendant, The St. Louis & Sandoval Coal & Mining Company, by the court at its August term, 1878, be, and is hereby, approved and confirmed, and he is ordered to make further report of his actings and doings as such receiver."

This complainant, the new company, charges and states that the before-mentioned several decrees and findings in the said original suit all and each of them still stand on the records of this
454 court as the solemn findings and decrees of this court in said cause, unreversed and in full force, except such partial re-

versal of the said decree rendered at the August term, 1878, of this court by our supreme court as aforesaid; and it appears from said unreversed findings that the only stockholders in said old company who have ever paid anything on their stock or offered to pay anything to enable said old company to carry on its undertaking are the following-named defendants to this cross bill, who hold stock and have paid thereon as follows, to wit: Isaac Main, ten shares, $1,000, paid $50.00; Lambert Noland, one share, $100, paid $5.00; Jacob Lichty, two shares, $200, paid $10.00; C. N. Rockwell, three shares, $300, paid $15.00; Charles Reinhardt, five shares, $500, paid $20.00; Francis H. Edwards, five shares, $500, paid $25.00; Henry Wellhoener, fifty shares, $5,000, paid $250.00; Frank Seymour, two shares, $200, paid $10.00.

That the other pretended stockholders never paid anything to said old company for their pretended stock and they are and each of them is insolvent and financially were at the time when payment was required insolvent and unable to pay for such stock; that the so-called paid-up stock issued to the defendants Elizabeth Townsend to the amount of $5,000, George H. Wharton to the amount of $4,000, and to True N. Blackman to the amount of $1,000 was all fraudulently issued with the intent to defraud the said old company out of one-fifth of its capital stock and for which said old company never received anything and for which the said Blackman, Wharton, and Elizabeth Townsend paid nothing. It further appears from said findings and unreversed decrees that the defendants herein, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, and George Wharton, have never paid anything on their supposed stock in said old company, and when they and each of them neglected and refused
455 to pay such assessment *and* they were then in such a pecuniary condition that they could not be compelled to pay, and that they are not equitable holders of any stock in said old company and should have no voice in the management of the affairs of said old company, much less in the adjustment of the supposed assets of the dissolved corporation, and that the above-named stockholders who have paid their assessment and who were found to be solvent and responsible for the amount of their stock at the time it was subscribed and they only should be allowed in equity to attend; and the said complainant new company further shows unto your honor soon after the said purchase by Main of said property from the said George W. Hered as receiver, as hereinbefore stated, this new company was organized, and the said Main then proposed to sell to this new company all the said property for enough to pay off and discharge the indebtedness and liabilities of said old company; whereupon this new company then inquired and examined into the condition of said property and the title thereto, and found that this suit of Francis H. Edwards *et als. vs.* The St. Louis & Sandoval Coal and Mining Company was pending in this court, and that at its August term, 1878, this court, after finding in its decree that

proper service was had on said old company and upon all the other defts in said suit, appointed George W. Hered receiver of said old company, with the functions and authority hereinbefore fully stated; that said Hered, as such receiver, sold the property to Main and reported said sale to this court, which report and sale was approved by this court, and that said receiver had conveyed said property to said Main by deed in due form, describing the property correctly, and thereupon this complainant purchased said property from said Main for the consideration of $2,465.30 to him paid and received from said Main and his wife a deed to and for said two acres of land and such mining rights as the receiver had conveyed to him; and this complainant says that the said Main was then a stockholder and director in said old company and the only director
456 who held, as this complainant *as* advised and believes, any valid stock in said old company; and this complainant further says that it is informed and believes, and so charges the truth to be, that the said Main, *is* his purchase and sale of said property as aforesaid, acted for and with the knowledge and consent of all the above-named stockholders in said old company who had paid their assessment and who were pecuniarily responsible for the amount of their respective shares of stock, and that such sale was made to relieve those solvent stockholders from their several liabilities for the debts of the old company; and this complainant charges and states that soon after its purchase of said property from said Main as aforesaid, to wit, in the early part of the year 1879, it, the complainant, took possession of said property; that there was then a shaft sunk on said two acres of land to the depth of about 114 feet, which had been neglected and abandoned and was partially filled with water; that complainant immediately employed hands and went to work *on* sinking the shaft and putting up such buildings and fixtures as were necessary for the work; that it sunk said shaft to the depth of over six hundred feet, where it struck a paying vein of coal nearly six feet thick; that it spent in sinking said shaft and in putting up an office, a boiler-house, an engine-house, and other necessary buildings and fixtures on said two acres of land a large amount of money, to wit, about the sum of $25,000.00; that it paid the indebtedness of the said old company, amounting to about the sum of $2,465.30, and that during all the time that the complainant was thus in possession of said property and sinking said shaft and erecting said buildings and other improvements the said old company and its officers and stockholders knew what said complainant was doing and they, and especiall- the said solvent stockholders, consented thereto. All knew that said new company claimed the title to said property under such purchase from Main, and no
457 one of the stockholders of the old company nor any of the officers of the old company nor the old company itself ever objected to the shaft being sunk nor any of the other permanent improvements so made during the time that such work was being done, but they all stood by and acquiesced therein.

And the complainant charges and states that none of the said solvent stockholders have ever hitherto objected to the possession of said

property by this complainant or in any way attempted to impair or defeat the title of complainant in or to said property; but the other defendants herein who have not paid anything on their fraudulently acquired stock have, as this complainant is informed and believes, confederated together to cheat and defraud this complainant out of its title to said property and out of what it has invested in said property in good faith, believing that its title thereto was perfect in every way; and the said complainant further charges and shows unto your honor that the said Ozias Townsend and the other fraudulent stockholders in said old company, without the consent or authority of the said solvent stockholders of said old company who had paid their assessment as aforesaid or any of them and without any valid authority, used the name of the said old company, and at the August term, 1883, of this court brought action of ejectment against this complainant for the said property, and at said August term, 1883, said ejectment suit was tried and judgment rendered for this complainant (the defendant in said ejectment suit); that this pl't'ff in said ejectment suit then obtained a new trial in said ejectment suit under our statute, and also appealed from said judgment to the supreme court of this State at its November term, 1883; and afterwards, to wit, in Sept., 1884, the said judgment was reversed by said supreme court, and at the November term, 1884, of said supreme court an order was made by said supreme court to remand said ejectment suit to this court for a new trial, so that
458 said ejectment suit is now pending in this court for a new trial both under the statute and by order of said supreme court, and as said supreme court in substance holds that complainant's title to said property is not good in law by reason that there was no legal service on said old company at the time when the order of sale by said receiver was made, this complainant insists that said ejectment suit should be stayed and its trial suspended until this suit is determined and the equitable rights of complainants in and to said property shall be fully adjusted and until the further order of this court, and the said complainant further shows that other suits have in like manner and without leave of the court and without *and* just authority been instituted in the name of said old company, one a bill in equity against this complainant for injunction and the appointment of a receiver to take charge of said property and for an account and general relief, which bill was filed in this court and was afterwards presented to Judge Wall of this court, at chambers, on a motion for an injunction, &c., and which *n*otion and injunction was denied by his honor, Judge Wall; also a suit in trespass in the name of said old company against James S. Martin and others, charging them with trespassing on said property and taking the coal of said old company's, and complainant charge- that the def'ts in said trespass suit are the officers, stockholders, and employees of this complainant. These last two suits were instituted without leave of this court and for that reason should be dismissed by the court, and all these suits were instituted in the name of said old company by one N. M. Young, who pretends to be the attorney of said old company, but this complainant charges upon information and belief that he is not the

att'y of said old company, and that he has no right to appear for said company in this court, but that he is confederating and acting with and for the defendant Ozias Townsend and a few other pretended and fraudulent stockholders who never paid anything on their
459 stock as aforesaid, and who are seeking to harass this complainant and to cheat and defraud it out of its rights and property. Wherefore this complainant asks that the said N. M. Young be ruled to show to this court by what authority he acts as the attorney and solicitor of said St. Louis and Sandoval Coal & Mining Company in this court; whether he is a duly licensed att'y-at-law in the State of Illinois; if so, whether he is authorized to act for said old company by any action of said old company; if so, when and where was said action had, who was present and participated in such action? Is there a record of any such action? If, so, bring such record in court. What are the terms of your retainer and by what persons are you retained? In case you secure anything out of the property in controversy are you to have any part of it; if so, how much? And the said complainant further shows and charges that it paid for said property all it was worth for any purpose and more than it was worth for any other purpose than that of mining coal after the shaft was sunk to a paying vein of coal, and that said two acres of land and the shaft and other permanent improvements are valuable to this complainant mainly because of the coal and right to mine which it has in the immediate vicinity of said shaft, and the boilers and engines and other personal property which it has on said two acres for the purpose of working such coal mine, and the buildings and fixtures which it owns on lands adjoining said two acres, all of which are used in operating said coal mine and are necessary for that purpose, so that if this complainant's title to said property is not perfected, but lost, it will sustain an irreparable injury, and the said two acres of land, with the coal shaft, buildings, and other permanent improvements erected thereon by this complainant as aforesaid would be of very little value to the said old company, as it had no valid title or right to any mining rights or royalty in the vicinity of said two acres, because, as complainant is advised and believe-, it has lost and forfeited all such rights by failure to comply with
460 the condition upon which such rights were conveyed—that is, by failing to sink such shaft to a paying vein of coal within two years from the 8th of December, 1877. In consideration of the premises and as your complainant is remediless except in a court of chancery, your complainant in this cross-bill prays that the defendants Margaret E. Edwards, as executrix of said Francis H. Edwards, dec'd, and the def'ts Lambert Noland, Frank Seymour, Charles Reinhardt, Isaac Main, and Jacob Lichty may, and Mrs. L. N. Rockwell, as adm'x of said C. N. Rockwell's estate, be ruled to answer this cross-bill under oath, and the defendants The St. Louis & Sandoval Coal & Mining Company, Andrew Roll, Johnson A. Power, Albert E. Ross, Henry Wellhoeuer, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True

N. Blackman, and George N. Wharton may be ruled to answer this cross-bill without oath, the oath of these defendants being expressly waived; that the prosecution of said ejectment suit, said chancery suit, and said trespass suit so commenced as aforesaid be stayed and enjoined until the further order of this court, and that upon a full and final hearing hereof your honor will order, adjudge, and decree that the said def'ts, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, and George N. Wharton, are not equitable or valid stockholders in said St. Louis and Sandoval Coal & Mining Company, and that they have no interest in the assets of said company and have no right to interfere with the application of any such assets, and that the defendants Margaret E. Edwards, as such executrix of Francis H. Edwards, dec'd, and Lambert Noland, Henry Wellhoeur, Frank Seymour, Charles Reinhardt, Isaac Main, and Jacob Lichty are the only valid and equitable surviving stockholders in said St Louis and Sandoval Coal & Mining Company and have full right and power to dispose of any and all the
461 property of said old company which has been dissolved by the decree of this court, and that they be ordered to execute and deliver to the complainant a valid conveyance by deed in the name of said old company (to wit, the St. Louis & Sandoval Coal & Mining Company) for the said property, to wit: "The S. ½ of 4 acres of lands on the north of the right of way on the O. & M. R. W. and adjoining Primmer's addition to the town (now village) of Sandoval and running north as far as Scott street, in said addition, and east as far enough to contain four acres, with the exception of the street to be continued through said four acres from said Primmer's addition eastward in the west half of the N. E. ¼ of section seventeen (17), township two (2) north, range one (1) east, in Marion county, Illinois; and also for the mining rights and royalty in and to certain lands and described in deeds recorded in Record Book D D, commencing on pages 74 & 90 of Deed Records of said Marion county, and conveyed by said Ozias Townsend to the St. Louis & Sandoval Coal & Mining Company, and by George W. Hered, receiver, to said Isaac Main, all in the county of Marion and State of Illinois, by a day to be fixed by this court, and in default of such conveyance by the time so fixed by this court that the master in chancery of this court execute such deed of conveyance and deliver the same to the complainant; and that the said St. Louis & Sandoval Coal & Mining Company be restrained and enjoined from prosecuting said ejectment suit against this complain-t for said property and said chancery for a receiver, injunction, and amount, &c., against this complainant, and also said suit for trespass against said James S. Martin and others; and that said suits be dismissed by this court at the costs of plaintiff or its att'y; and will your honor grant such other and further relief as the nature of the case may require and to justice and equity shall seem meet.

462 SANDOVAL COAL & MINING COMPANY,
By M. SCHAEFFER, *Its Solicitor.*

STATE OF ILLINOIS, } ss:
Marion County, }

M. Schaeffer, being duly sworn according to law, on oath says that he is one of the attorneys of the Sandoval Coal & Mining Company; that he has read the above and foregoing cross-bill, and that the matters and things therein set forth and charged are true in substance and fact, and in so far as they are stated on information and belief he believes them to be true.

M. SCHAEFFER.

Subscribed and sworn to before me this day, 9th of February, A. D. 1885.

J. B. LEWIS, *Clerk.*

In the Circuit Court, Marion County, Illinois.

SANDOVAL COAL & MINING COMPANY } No. 97. Chancery.
vs.
ST. LOUIS COAL AND MINING COMPANY. }

Defendant's Answer to Cross-bill.

Filed February 17th, 1885.—J. B. Lewis, clerk.

Circuit Court of Marion County, Feb'y Term, 1885.

SANDOVAL COAL & MINING COMPANY }
vs.
ST. LOUIS COAL AND MINING CO. }

Cross-bill. Answer to cross-bill.

And now comes St. Louis & Sandoval Coal & Mining Co. and Ozias Townsend, E. Townsend, Henry Wellhoeuer, W. H. Ross, and J. B. Mears for answer say as their joint and several answers to said cross-bill:

463

It is not true, as stated in cross-bill (p. 20), that the several decree- and findings referred to are unreversed, but this defendant states that all of said decrees and findings have been reversed.

It is not true, as stated, that "it appears from said unreversed findings that Isaac Main, Noland, Rockwell, Reinhardt, Edwards, and Seymour are the only stockholders of said old Co. who ever paid anything on their stock or offered to pay anything to enable said old company to carry on its undertaking."

Defendant says that neither of said parties contributed anything to carry on the undertaking nor does either of them own nor has either of them owned any stock in said old Co. Defendant says Henry Wellhoeuer is a stockholder.

It is not true, as stated (p. 21), "that the other stockholders never paid anything to said old Co. for their stock," nor is it true that either of them is or was insolvent and unable to pay for such stock when payment was required, nor is it true that the stock is

sued to Elizabeth Townsend, to Geo. H. Wharton, and to True M. Blackman was all or any of it issued fraudulently or with a view to defraud said old Co. out of one fifth of its stock (or out of any of its stock), and for which old Co. receives nothing, "nor has either of said parties received any stock for which they paid nothing." It is not true that it appears from findings and decrees that Roll, Power, A. E. Ross, McCabe, Ozias Townsend, E. Townsend, Hill, Sleals, Collins, Mears, Ross, Blackman, and George Wharton have never paid anything on their stock in old Co., nor is it true that either of them, when assessment was made, neglected or refused to pay such assessment, nor is it true that either of said parties was in such a pecuniary condition that they could not be compelled to pay. It
464 is not true that Main proposed to sell to new Co. said property for enough to pay debts of old Co. It is not true that new Co. purchased from Main the property mentioned for $2,465.30 or for any other sum. It is not true that Main was the only stockholder who held any valid stock in old Co., for defendant says that Main did not and does not hold any valid stock in said old Co., nor is it true that in his alleged purchase and sale "he acted for and with the knowledge and consent of all or any of the stockholders of the old Co. who had paid assessments and who were pecuniarily responsible for the amount of their respective shares of stock;" nor is it true that such sale was made to relieve those solvent stockholders (p. 23) *for* their several liabilities for the debts of the old Co. (p. 24). It is not true that in 1879, when new Co. took possession, *that* the shaft was full of water or had been abandoned by old Co., but defendant charges the fact to be that on the 27th June, 1878, a bill in equity was filed *vs.* it by Edwards, Main, *et al.*, and, without any notice to new Co., one G. W. Hered, then and now a resident of Cincinnati, Ohio, was appointed, without bond, a receiver of said property. Said Hered, by a decree rendered in this court by Judge Watts in August, 1878, was placed in possession of said property.

This def't says that said property has been continuously in litigation in this court and in the supreme court ever since. The character of the litigation will appear at large by reference to the records in this court in the chancery case of Edwards *et als. vs.* old Co. and the case of the old Co. *vs.* new Co., in ejectment, and the case of St. Louis & Sandoval Coal & Mining Company *vs.* Martin *et al.*, in trespass. The character of the litigation will more fully appear by reference to the case of St. Louis & Sandoval Coal & Mining Co. *vs.* Edwards, 103 Ill., p. 472, and the opinion of the supreme court of Illinois, rendered Sept. 27, 1884, in the case of St. Louis & Sandoval Coal & Mining Co. *vs.* Sandoval Coal & Mining Co.
465 Defendant says it is not true that new Co. spent in sinking shaft or in any other work on said two acres the sum of $25,000 or any other sum, but defendant says that new Co. has taken from the lands described in the original bill in this case and belonging to old Co. three or four hundred thousand tons of coal of great value, to wit, of the value of two dollars per ton (defendant will file cross-bill). It is not true that new Co. paid debt of old Co. of

$2,465.30 or of any other sum. It is not true that while new Co. was in possession the old Co., its officers or solvent stockholders or either of them, knew what new Co. was doing and consented thereto. It is not true that old Co. knew that new Co. claimed title by purchase from Main, nor is it true that none of officers or stockholders of old Co. or the old Co. itself objected to the shaft being sunk or other permanent improvements made at time work was done; nor is it true that none of the solvent stockholders have even hitherto objected to the possession of the property or any way attempted to impair or defeat title of new Co.; nor is it true that "other defendants" who have not paid anything on their stock confederated together to cheat and defraud new Co. out of title or out of what it invested in said property in good faith. It is not true that said Townsend and the other stockholders in said old Co., without consent or authority of solvent stockholders of said old Co. who had paid their assessments, without any valid authority, used the name of said old Co. and brought said ejectment suit. It is not true that old Co. obtained new trial under statute at August term, 1883, of circuit court when ejectment case was first tried, but defendant says it did obtain said new trial under statute at Aug. term, 1884. It is not true that defendant brought any of the suits named without authority It is not true that all the parties sued as defendants in trespass suit *vs.* Martin *et al. or* officers, stockholders, and employees of new Co. Defendant says that Elizabeth Townsend, Wharton, Blackman,
466 O. Townsend, Andrew Roll, Johnson A. Power, A. E. Ross, Henry Wellhoener, McCabe, T. B. Hill, James Sheals, Collins, John B. Mears, W. H. Ross were each and all valid holders of their stock, for which they paid full value. Defendant says at the time of sale by receiver and at the time new Co. went into possession the property in controversy was worth ten thousand dollars. Defendant says the by-laws of said St. Louis & Sandoval Coal & Mining Company, and which have been in full force ever since the organization of said Co., read as follows: "If any stockholder shall fail to pay assessments when calls are made he shall pay a fine of ten per cent., to be added to the amount unpaid and charged against him. Should the next assessment not be paid, then again ten per cent. shall be added to the amount due, and so on until the arrears of said stockholder equal the amount which he has paid in, and in such case the share or shares of stock may be declared forfeited. See by-laws, article 4, section 6."

Defendant says it is not true, as stated, that new Co. at any time before or after sale by receiver to Main or before or after its pretended purchase from him examined into the condition or title to said property. Defendant says it is not true that new Co. owns property or mining rights near said shaft. Defendant says that since the decision of The Supreme Court *vs.* New Co., in ejectment, said Co. has been trying to get quitclaim deeds to some of the mining rights owned by this defendant.

Defendant says all the suits referred to in cross-bill as having been brought by this defendant were instituted at the request of the valid stockholders of the St. Louis & Sandoval Coal & Mining Co.

and at the request of said Co. and by its direction; that the ejectment suit was brought by M. Millard, a licensed attorney and resident of East St. Louis, Illinois, and by N. M. Young, a licensed attorney of Missouri and resident of St. Louis, Mo.; that said
467 Millard and said Young before bringing this suit obtained permission to do so from Judge Watts, circuit judge; that said attorneys were employed to represent the interests of said Co. (through O. Townsend, president, who was fully empowered to do so by the board of directors; O. Townsend, J. B. Mears, M. Millard, W. H. Ross, and George Dausch), and by the following valid stockholders: O. Townsen l, E. Townsend, J. B. Mears, W. H. Ross, Henry Wellhoeuer.

It is not true, as stated, that new company paid for property what it was worth. It is not true, as stated, that *ond* company has no valid title or right to any mining rights on royalty in the vicinity of said two acres. Defendant says it owns the said two acres in fee-simple and the mining rights of nearly one thousand acres of coal in the vicinity of the said shaft, a full description of which is given in the cross-bill of new Co. and appears in the original bill filed by Edwards *et al.* against this defendant. Defendant presents herewith its cross-bill and asks for affirmative relief.

ST. LOUIS & SANDOVAL COAL & MINING COMPANY.
N. M. YOUNG &
G. A. KOERNER, *Sols. for said Co.*
J. B. MEARS.
O. TOWNSEND.
E. TOWNSEND.
W. H. ROSS.
HENRY WELLHOEUER.

N. M. YOUNG,
G. A. KOERNER,
Sols. for said Def'ts.

SAN. C. & M. Co.
vs.
ST. L. & SAND. COAL & M. Co. *et als.* } No. 97.

Replication to Answer of Old Co., Townsend et als.

Filed February 18th, 1885.—J. B. Lewis, clerk.

Circuit Court of Marion County, Illinois, February Term, 1885.

468 FRANCIS H. EDWARDS *et als.*
vs.
ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et als.* } Bill in Chancery.

SANDOVAL COAL & MINING COMPANY
vs.
ST. LOUIS & SANDOVAL COAL & MINING COMPANY *et als.* } Cross-bill.

And now comes The Sandoval Coal & Mining Company, the complainants in the above-entitled cross-bill, and by way of replication to the answer of the St. Louis & Sandoval Coal & Mining Company, and adopted by J. B. Mears, O. Townsend, E. Townsend, and W. H. Ross, says that many of the allegations in said answer are immaterial and all the material facts set up or stated in said answer are not true, and that the allegations and charges in said cross-bill are true. Wherefore it prays as it has in its cross-bill prayed.

SANDOVAL COAL & MINING COMPANY,
By M. SCHAEFFER, *Its Solicitor.*

FRANCIS H. EDWARDS, LAMBERT NOLAND, Henry Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, C. N. Rockwell
vs.
THE ST. LOUIS & SANDOVAL COAL AND MINING Company, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias
469 Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True W. Blackman, George W. Wharton, & Elizabeth Townsend. } Bill in Chancery.

THE SANDOVAL COAL & MINING Co.
vs.
THE ST. LOUIS & SANDOVAL COAL AND MINING Co. *et al.* } Cross-bill in the Above-entitled Cause.

1885, Monday, August 10th, being the first day of the August term of this court, this cause came on for trial. Solicitors Green & Gilbert, H. C. Goodnow, & M. Schaeffer appeared for the complainants in original and cross-bills, and N. M. Young and G. A. Koer-

ner appeared for the def'ts The St. Louis & Sandoval Coal & Mining Co., J. B. Mears, Ozias Townsend, Elizabeth Townsend, Wm. H. Ross, and Henry Wellhoeuer; also appeared by answer to the cross-bill the def'ts Charles Reinhardt, Mrs. M. E Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell; the other def'ts in the cross-bill came not, but made default, and the cross-bill is taken as confessed by such def'ts who have not answered. This cause came on for hearing and was heard on original and supplemental bills and answers thereto and replication and on cross-bill and the answers and replication to the answer of the St. Louis & Sandoval Coal & Mining Company, J. B. Mears, O. Townsend, E. Townsend, W. H. Ross, and Henry Wellhoeuer, the answer of Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell, being taken as confessed by the complainant in the cross-bill and all the evidence taken before J. E. Bryan, master in chancery, as well as the evidence taken on a former trial on the original bill, taken down by E. L. Stoker, and sundry deeds and records of this court, and the court, having heard the same and having heard arguments of the solicitors of the several parties, takes this cause under advise-
470 ment. August 25th, 1885, being the 3rd Tuesday of the August term of this court, the court, having duly considered the evidence introduced in this cause, as well as the arguments of the solicitors, and being now fully advised, does find that the material allegations in the cross-bill herein are true, and that the allegations in the sworn answer of Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell to said cross-bill are also true. The following-named def'ts in said cross-bill, to wit, Isaac Main, L. Noland, Jacob Lichty, C. N. Rockwell, dec'd, now represented by his admr., Mrs. C. N. Rockwell; Charles Reinhardt, Francis H. Edwards, now represented by his executrix, Mrs. M. E. Edwards; Henry Wellhoeuer, and Frank Seymour, are the only stockholders in the St. Louis & Sandoval Coal & Mining Company who paid anything on their said stock, and that they are the only parties or stockholders who have any interest in or right to determine how the assets, if any, of said company which has been dissolved by the decree of this court shall be disposed of, to whom, and for what consideration.

That the other defendants in said cross-bill, to wit, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, and George W. Wharton, never paid anything for their supposed stock in said St. Louis & Sandoval Coal & Mining Company, and if any such stock was issued to them or either of them it was wrongfully and fraudulently done, and neither of them has any interest in the assets of said company nor any right to interfere with the disposition of such assets, and that they or some of them have fraudulently confederated an- wrongfully used the name of said St. Louis & Sandoval Coal & Mining Company in the prosecution of suits for

the possession of and injurious to what was once the prop-
471 erty of said company, in total disregard of the wishes and interests of the valid stockholders of said company, and that they should be enjoined from using name of said *names of said* company and from prosecuting any such suits.

That at the instance and upon the motion of the said valid stockholders in said St. Louis & Sandoval Coal & Mining Company, to wit, Francis Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and C. N. Rockwell, one George W. Hered was by this court appointed to receive the property of said company, and, under the direction and with the advice and consent of said valid stockholders, he, the said George W. Hered, on the 28th day of Sept., 1878, sold and conveyed to one Isaac Main all the property of said company, to wit, the south half of four acres of land north of the right of way of the O. & M. railway and adjoining Primmer's addition to the village of Sandoval and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through the said four acres from said Primmer's addition eastward, in the west half of the northeast quarter of section seventeen, T. 2 N., R. 1 east, in Marion Co., Ill., it being the same land in bill and cross-bill described, and also the buildings, mining fixtures, and all rights to mine coal in certain lots and lands described in bill and cross-bill.

That the said Isaac Main bought said property in cross-bill described at the instance and request of all the valid stockholders of said St. Louis & Sandoval Coal & Mining Company for the purpose, if possible, of selling the same for enough to pay off the indebtedness of said company, which then amounted to over two thousand dollars, so as to save said valid stockholders from further liabilities for such debts, and that said Main afterwards, at their instance and request, sold and conveyed all the said property in consideration of the sum of $2,465.30 paid by the complainants in the said cross-bill to said complainant, The Sandoval Coal & Mining Company, which said sum of
472 $2,465.30 was all said property was then worth and more than it was worth for any purpose other than mining purposes after an outlay of a large sum of money to make it available for that purpose; that The Sandoval Coal & Mining Company, the complainant in said cross-bill, soon after its purchase of said property from said Main, to wit, in the spring of 1879, took possession of said land and property and with the consent and under the advice of all of said valid stockholders of said St. Louis & Sandoval Coal & Mining Company sunk a coal shaft, erected buildings and machinery thereon, and expended in sinking said shaft and erecting such buildings and other permanent fixtures and machinery over the sum of twenty-five thousand dollars, all of which was done with the knowledge, consent, direction, and acquiescence of said valid stockholders and no objection to such improvement was made or any title claimed to said property by even the insolvent or fraudulent stockholders until long after said expenditures had been made, and that such expenditures were made in good faith under the

belief that the title to said property was perfect in said complainant in cross-bill.

That the complainant in cross-bill owns other lands, buildings, and improvements and mining rights in the immediate vicinity of an- connected with the land, &c., in controversy in this suit, both by buildings and machinery on the surface and by works and passages under ground, which would be comparatively valueless to complainant in cross-bill if its title to said two acres of land were not perfected.

It is therefore ordered, adjudged, and decreed by the court:

1st. That the def'ts in the cross-bill, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, and George N. Wharton, are not equitable or valid stockholders in said St. Louis & Sandoval Coal & Mining Company, and that they have no interest in
473 the asset/s of said company and have no right to interfere with the application of any such asset/s nor to sue for the same.

2nd. That the def't- in the cross-bill, Margaret E. Edwards, as executrix of Francis H. Edwards, dec'd, and Lambert Noland, Henry Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. C. N. Rockwell, as the admr. of the estate of C. N. Rockwell, deceased, are the only equitable and valid stockholders in said St. Louis & Sandoval Coal & Mining Company and have full right and power to dispose of all the property of said company which has been dissolved by the decree of this court on original bill in this cause at a former term of this court.

3rd. That the said equitable and valid stockholders, to wit, Mar*ag*ret E. Edwards, as executrix of Francis H. Edwards, dec'd; Lambert Noland, Henry Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. C. N. Rockwell, as administratrix of the estate of C. N. Rockwell, dec'd, be, and they are hereby, ordered to execute and deliver to the complainants in the cross-bill, The Sandoval Coal & Mining Company, a valid deed of conveyance in the name of the St. Louis & Sandoval Coal — Mining Company for the said property, to wit, the south half of four acres of land on the north of the right of way of the Ohio & Mississippi railway and adjoining Primmer's addition to the town (now village) of Sandoval and running north as far as Scott street, in said addition, and east far enough to c*o*rtain four acres, with the exception of the streets to be continued through said four acres from said Primmer's addition eastward, in the west half of the northeast quarter of section seventeen (17), T. 2 N., R. 1 east, in Marion county, Illinois; also for the mining rights and royalty in and to certain lands and lots conveyed by sundry persons to Ozias Townsend and described in deeds recorded in Record Book D D, commencing on pages 74 and 90 of deed records of said Marion county, and conveyed by said Ozias Townsend to the said St. Louis & Sandoval Coal & Mining
474 Company and by George W. Hered as receiver to said Isaac Main, all in Marion county, Illinois, by the fifteenth day of

September, 1885, and in default of such deed being made and delivered as aforesaid by the day aforesaid that the master in chancery of this court executed such deed of conveyance and deliver the same to said Sandoval Coal & Mining Company.

4th. That the said St. Louis & Sandoval Coal & Mining Company, its agents and attorneys, and all other persons in its name or behalf be, and the same are hereby, perpetually restrained and enjoined from prosecuting any and all suits against the Sandoval Coal & Mining Company, either in ejectment for said property or trespass to said property, and that the ejectment suit No. forty-five of this term be, and they hereby are, restrained, and their prosecution perpetually enjoined and said suits dismissed at the costs of the plaintiff.

It is further ordered by the court that all the costs that have accrued herein, both those supplemental bills and the cross-bill, be taxed against the defendants in the original bill and that execution may issue for the same in the name of the complainants in original bill.

Appeal prayed by the defendants in the cross-bill. Appeal allowed upon said def'ts in cross-bill filing within sixty days from this date (August 25, 1885) certificate of evidence and an appeal bond in proper form in the penal sum of one thousand dollars, with good and sufficient security, to be approved by the clerk of this court.

CITY OF EAST ST. LOUIS, ILLS.

At a special meeting of the board of directors of the St. Louis & Sandoval Coal & Mining Company called in pursuance of a notice of the several directors and in confirmaty with the by-laws of the company, setting forth that the same was to be held at the office of the East St. Louis hotel, in the city of East St. Louis, at the
475 hour of 5 o'clock p. m., there were present the following-named directors, who, constituting a majority quorum of the board, proceeded to the transacting of business. Meeting called to order by Townsend, the president. Verbal report made by that officer as to the condition of the work in progress of the mine. Henry Wellhoeuer called up resolution submitted at a previous meeting in regard to adoption of additional by-laws, to wit: Resolved, That the following be, and is hereby, declared an additional by-law of this company:

SEC. 8. The directors shall have power to fill any vacancy in the board which may occur by death, resignation, or otherwise, the directors so elected to serve until the next general election of officers.

Which was adopted, those voting for it being Messrs. Wellhoeuer, Mears, & Townsend; absent, Isaac Main. Mr. Mears then nominated True N. Blackman for director, while James Sheals resigned; which nomination was seconded by Wellhoeuer. Those voting in the affirmative being Messrs. Mears, Townsend, & Wellhoeuer—absent, Mr. Main—Blackman was thereupon declared elected a director of the company. Mr. Mears then offered the following preamble & resolutions:

Whereas Ozias Townsend has devoted a large share of his time and attention for the past year to the organization of the St. Louis & Sandoval Coal & Mining Company and has expended freely his money in traveling and promoting its interests and in securing for the said company large and very valuable franchises of coal and mining privileges; and whereas he has devoted his time from the inception of this enterprise and formal application for articles of association up to the 1st day of January, 1878, and for all of which no compensation has been rendered him; and whereas it is right and proper he should be paid for his labors in such behalf and should be fully reimbursed for the time and money so expended:

Now, therefore, be it resolved, 1st, That in full satisfaction
476 for such services and expenditures and for his attention to the business of this company up to and prior to the 1st day of January, 1878, the said Ozias Townsend is hereby allowed and this company binds itself to pay to him the sum of ten thousand dollars, the same to be receipted for by him as in full compensation for said services as aforesaid, and if he shall wish to be indorsed upon the stock held by him as a member of this association as so much paid on account of calls made and to be made on such of the stock as may be held or indicated by him, and such indorsement by the secretary and treasurer of this company shall be held and accounted for as a receipt in full from him for calls on said stock to the amount of ten thousand dollars as aforesaid. Be it resolved, 2nd, The sec'y and treas. is hereby authorized and directed to indorse upon the stock held by said Townsend, as he shall indicate, payments of calls on the same to the extent aforesaid, and in the event of such indorsement failing, then he shall have a valid claim against this com. to that extent for such services hereby acknowledged to be rendered, but not otherwise. Be it resolved, 3rd, That the said Townsend be required to sign duplicate receipts for the reception of the amount indorsed on his stock as aforesaid, and that one, together with copy of *this* resolutions attached, be retained in the main office at Sandoval and one be retained on file by the sec'y at the office at the city of St. Louis.

On motion, the foregoing resolution were adopted, those directors voting for the same being Messrs. Mears, Blackman, & Wellhoeuer; Mr. Townsend not voting; Mr. Main absent. Before adjourning the directors present were requested to sign the minutes of this meeting in token of approval of same, which was accordingly done as hereunto below.

OZIAS TOWNSEND, *Pres.*
HENRY WELLHOEUER, *Sec'y.*

TRUE N. BLACKMAN,
JOHN B. MEARS, *Directors.*

477 ST. LOUIS, MO., *Dec. 20th*, 1877.

The board of directors meet pursuant to *adopt* 614 N. Ninth street.

Minutes of last meeting were read and approved.

Present: Ozias Townsend, Isaac Main, Henry Wellhouer, and John B. Mears.

By-laws adopted section by section.

On motion, the salery of the president, *ex officio* superintendant, was fixed at one hundred and fifty dollars per month for the first term, to commence on the 1st Jan., 1878.

On motion, it was resolved that the necessary traveling expenses for the board of directors expended in the interest of the company shall be paid out of the fund of the comp.

On motion, the *board* of the secretary, *ex officio* treasurer, was fixed at five thousand dollars.

On motion, the salery of secretary, *ex officio* treasurer, was laid over until next meeting.

On motion, the proposal of Frank Seymour for sinking shaft according to specification was accepted and a contract order to be drawn accordingly.

On motion, adjourned to meet on the 10th day of Jan., 1878, at 1 o'clock p. m., at 614 N. 9th St., St. Louis, Mo.

Final Order Affirmed.

At a supreme court begun and held at Mount Vernon, on Tuesday, the 3rd day of November, in the year of our Lord one thousand eight hundred and eighty-five, within and for the southern grand division of the State of Illinois, to wit, on the 25th day of January, A. D. 1886, in vacation.

Present: John H. Mulkey, chief justice.
" John M. Scott, associate justi-e.
" Benj. R. Sheldon, associate just.
" Alfred M. Craig, associate just.
" Simeon P. Shope, associate justice.
" Benj. D. Magrunder, associate justice.

478 THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, George N. Wharton, and Henry Wellhoeuer, Plaintiffs in Error,

vs.

THE SANDOVAL COAL & MINING COMPANY, Andrew Roll, Johnson A. Power, True N. Blackman; Margaret E. Edwards, Executrix of Francis H. Edwards, Dec'd; Lambert Noland, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty; Mrs. L. N. Rockwell, Administratrix of C. N. Rockwell, Deceased, Defendants in Error.

No. 12. Error to Marion.

On this day came again the said parties; and the court having diligently examined and inspected as well the record and proceed-

ings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the decree aforesaid is there anything erroneous, vicious, or defective, and that that record is no error, therefore it is considered by the court that the decree aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said defendants in error recover of and from the said plaintiffs in error costs by them in this behalf expended, and that they have execution therefor.

479 Supreme Court, Southern Grand Division.

STATE OF ILLINOIS, *ss:*

I, J. O. Chance, clerk of the supreme court of the State of Illinois, do hereby certify the foregoing to be a full, true, and complete copy of that portion of a certain transcript certified to this court from the circuit court of Marion county and filed herein on the 4th day of November, A. D. 1885, in a certain cause, wherein The St. Louis & Sandoval Coal & Mining Company *et al.* were pl*ia*ntiffs in error and The Sandoval Coal & Mining Company *et al.* defendants in error, embracing and containing a copy of the following papers and proceedings, to wit:

1st. Original bill.
2nd. Decree *pro confesso* and final decree.
3rd. Report of receiver.
4th. Answer of Ozias Townsend *et al.*
5th. Answer of St. Louis & Sandoval Coal & Mining Co.
6th. Final decree.
7th. Report of receiver.
8th. Supplemental bill.
9th. Answer of Sandoval Coal & Mining Co.
10th. Cross-bill of Sandoval Coal & Mining Co.
11th. Answer of St. Louis & Sandoval Coal & Mining Co.
12th. Replication to answer.
13th. Final decree.
14th. Appeal granted.
15th. Resolution by the board of directors fixing O. Townsend's compensation at $10,000.

480 16th. Resolution fixing salary of president at $150 per month.

I further certify that Exhibit "A," hereto attached, is a true, full, and complete copy of the final order and judgment of this the supreme court in said cause as appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Mt. Vernon, this 18th day of November, A. D. 1887.

[SEAL.] J. O. CHANCE, *Clerk.*

In the Circuit Court of Marion County, Illinois, August Term, 1883.

EDWARDS *et al.*
vs.
THE ST. LOUIS AND SANDOVAL COAL & MINING COMPANY *et al.*
} Bill to Wind Up Corporation.

And now comes the defendants and — set aside the decree entered in this cause in vacation for the following reasons:

1st. Because the order was not agreed to by the parties or approved by the judge hearing the case.

2nd. Because it is not supported by the evidence or consistent with the objects or prayer of the bill.

3rd. Because it does not find the amount due the supposed creditors or decree a sale of the property or what sum shall be paid or allow the company to pay its debts or discharge the re-
481 ceiver or, in fact, give the company or other defendants any rights whatever.

Per M. MILLARD,
Att'y, for Solicitor.

Filed August 15th, 1883.

H. R. HALL, *Clerk.*

It is hereby admitted that the foregoing motion was filed in the above cause at the time stated, and that it was continued until the February term, 1885, of said court, when it was by said court overruled.

Dec. 27th, 1888.

JAMES CARR,
Sol. — Complainant.
M. SCHEAFFER,
Sol. for Def'ts.

Bill to Dissolve Corporation, Appoint Receiver, for Relief.

STATE OF ILLINOIS, } *ss:*
Marion County, }

In the Circuit Court, to the February Term, A. D. 1881.

FRANCIS H. EDWARDS, LAMBERT NOLAND, HENRY WELLHOEUER, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty; Lucinda Rockwell, Executrix of Estate of C. N. Rockwell, Dec'd,

vs.

482 THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, George Wharton, Elizabeth Townsend.

Decree.

And now, on this day, February 14th, 1881, leave is given to open depositions; and now, again, on the twenty-second day of

February, 1881, comes the complainants, by their solicitors; also comes the defendant Ozias Townsend, Mary A. McCabe, William H. Ross, John B. Mears, and Elizabeth Townsend, by their solicitors, M. Millard and Young, and this cause, being ready for trial, come on to be heard as against these defendants on bill, answer of said defendants, replication thereto, exhibits, records, depositions, and oral proofs taken by E. L. Stoker, special master appointed by the court to take down the same; and the court, being fully advised therein, doth order, adjudge, and decree that the original decree made at the August term, A. D. 1878, of this court in this cause stand confirmed as against said defendants so answering, with costs, and that the complainants recover their costs against said defendants, and that execution issue therefor; whereupon the said
483 defendants, jointly and severally, pray an appeal to the appellate court, which said appeal is by the court allowed upon said defendants or any of them appealing entering into a bond to complainants in the penal sum of six hundred dollars, with security to be approved by the clerk of this court within thirty days from this date. It is further ordered by the court that bill of exceptions and certificate of oral evidence be filed within thirty days from this date, and that this cause be continued for report of receiver, &c., &c.

The above and foregoing was filed March 14th, 1881.

R. H. HALL, *Then Clerk.*

Decree.

STATE OF ILLINOIS, } ss:
Marion County, }

In the Circuit Court, February Term, A. D. 1883.

FRANCIS H. EDWARDS, LAMBERT NOLAND, HENRY WELLHOENER, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, & Lucinda Rockwell, Ex.,	
vs.	
THE ST. LOUIS & SANDOVAL COAL & MINING Company, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Thos. B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True W. Blackman, George W. Wharton, and Elizabeth Townsend.	Chancery.

Decree of Court.

And now, on this day, to wit, Monday, February 12th, A. D. 1883, come the complainants, by Schaeffer & Goodnow, their solicitors, and also come the defendants, by Millard & Young, their solicitors, and this cause, being ready for trial, came on for trial and was heard by the court upon the bill, answers of defendants The St. Louis & Sandoval Coal & Mining Company, Ozias Townsend, Elizabeth Townsend, Mary A. McCabe, William H. Ross, and John B. Mears; replications thereto; the default of defendants Andrew Roll, Thomas B. Hill, James Sheals, Johnson A. Power, Albert E. Ross,

James Collins, True N. Blackman, and George W. Wharton; records, exhibits, depositions, and oral evidence, and letters, books thereon, taken by E. L. Stoker, special master, and read on the hearing of this cause at February term, A. D. 1881, as per stipulation on file herein, and the court, having heard the evidence, takes this cause under advisement, to be argued by counsel in vacation; and afterwards, to wit, July 14th, A. D. 1883, at chambers, the court hears the argument of counsel, and, being fully advised herein, doth find that the allegations in the bill are sustained by the evidence and that the court has jurisdiction of the parties hereto and the subject-matter; that the St. Louis & Sandoval Coal & Mining Company about the tenth day of March, A. D. 1878, ceased to prosecute the work for which it was organized, leaving debts unpaid to complainants, Frank Seymour and others, to the amount of two thousand one hundred dollars; that the business of said St. Louis
485 & & Sandoval Coal & Mining Company was mismanaged by its officers; that said company is insolvent, and that it would be useless for said company to resume business on account of its financial embarrassments.

It is therefore ordered, adjudged, and decreed by the court that the defendant The St. Louis & Sandoval Coal & Mining Company be, and the same is hereby, dissolved and for nothing esteemed in law, and the appointment of George W. Hered as receiver of said defendant, The St. Louis & Sandoval Coal & Mining Company, by the court be, and the same is hereby, approved and confirmed, and he is ordered to make further report of his actings and doings herein as such receiver.

Whereupon the defendant- pray an appeal to the supreme court of the State of Illinois, southern grand division. It is therefore further ordered and decreed by the court that the said defendant-, any or either of them, be allowed to appeal this cause to the said supreme court upon filing bond in the penal sum of one thousand dollars, payable to complainants, conditioned according to law, with good and sufficient surety, to be approved by the clerk of this court, within thirty days from the filing of this decree in the said circuit court.

The above and foregoing decree filed August 7th, 1883.

H. R. HALL, *Then Clerk.*

FRANCIS H. EDWARDS *et al.*
vs.
ST. LOUIS & SANDOVAL COAL AND MINING COMPANY. } Bill in Chancery.

Monday, February 9th, 1885, this cause is called, and now comes the receiver of the St. L. & S. C. & M'g Co. and makes his report herein, which said report is in the words and figures follow-
486 ing, to wit: And now comes again George W. Hered, the receiver appointed in the above-entitled cause by the circuit court of Marion county, Illinois, at its August term, 1878, and in addition to the report which he made and filed in said court and cause on the 11th day of February, 1879, he will further report that

immediately after the sale of the property of said St. Louis & Sandoval Coal & Mining Company to Isaac Main, as before reported to this court in the report above mentioned, he gave to said Main possession of all the property so sold to said Isaac Main, and that since that time he has done nothing further with said property nor anything else to settle the debts of said St. Louis & Sandoval Coal & Mining Company; that said company had no means by which the mining shaft could have been completed; that he afterwards learned that the said Isaac Main had sold said property to the Sandoval Coal & Mining Company and had realized enough therefor to pay all the debts of the St. Louis & Sandoval Coal & Mining Co., and that such debts were all paid and discharged by said Sandoval Coal & Mining Company. Therefore I concluded that there was nothing further for me as such receiver to do, and I made no effort to collect anything from the supposed solvent stockholders, and have received nothing as such receiver since my former report. I was informed and believe that immediately after the said sale by Main to the Sandoval Coal & Mining Company the said last-mentioned company took possession of said property and sunk the shaft and is now in possession thereof and operating it as a coal mine, which, as their receiver is advised, the said St. Louis & Sandoval Coal & Mining Company was financially unable to do, and none of its officers or stockholders ever offered to furnish any means to this receiver to complete the shaft or for any other purpose, nor did they or any of them, so far as this receiver knows, concern themselves about said property or take any interest in the same. Except the said Main, who seemed anxious only
487 that the few solvent stockholders should be saved from their liability for the debts of the St. Louis & Sandoval Coal & Mining Company, none of them ever suggested to this receiver that he could do anything with said property except to sell the same.

All of which is respectfully submitted.

G. W. HERED,
Receiver St. L. & S. C. & M. Co.

And now comes the complainants, by M. Schaeffer, E. C. Jennings, Green & Gilbert, their solicitors, and file their supplemental bill making the Sandoval Coal & Mining Company an additional defendants; and now comes The Sandoval Coal & Mining Company, hereinafter named, the new company made defendant in this cause by supplemental bill filed at this term of court, and answers said supplemental bill, and also file- their cross-bill.

And now comes the defendant The St. Louis & Sandoval Coal & Mining Company, by N. M. Young, their attorney, and files demur-er to supplemental bill and cross-bill, which said demurrer is by the court overruled and rule is by the court to answer by Thursday morning.

The complainants in cross-bill now enter their motion that the plaintiffs in case No. 57, to wit, St. Louis & Sandoval Coal & Mining Company, ejectment, and case No. 76, to wit, St. Louis & Sandoval

Coal & Mining Company *vs.* James S. Martin and others, trespass, are restrained from further proceeding until further order.

FRIDAY, *February* 13, 1885.

This cause is again called, and now comes the St. Louis & Sandoval Coal & Mining Company, by their said counsel, and moves the court to set aside or modify the decree filed in vacation after February term, 1883; which said motion is by the court refused.

WEDNESDAY, *February* 18, 1885.

This cause is called again, and now comes the St. Louis &
488 Sandoval Coal & Mining Company, by its said solicitors, and moves the court to remove George W. Hered, the receiver, and appoint another; which said motion is by the court refused.

And now comes Henry Wellhoeuer and asks leave of the court to withdraw from the case as complainant in original bill and supplemental bill; thereupon, on motion, it is ordered by the court that this cause stand continued.

Circuit Court of Marion County, Illinois, August Term, 1885.

FRANCIS H. EDWARDS *et al.* *vs.* THE ST. LOUIS & SANDOVAL COAL & MINING COMPANY.	Bill in Chancery.
THE SANDOVAL COAL & MINING CO. *vs.* THE ST. LOUIS & SANDOVAL COAL AND MINING COMPANY *et al.*	Cross-bill in the Above-entitled Cause.

1885, August 10th, being the first day of the August term of this court, this cause come on for trial. Solicitors Green & Gilbert, H. C. Goodnow, and M. Schaeffer appeared for the complainants in the original and cross bills, and N. M. Young and G. A. Koerner appeared for the def'ts The St. Louis & Sandoval Coal & Mining Company, J. B. Mears, Ozias Townsend, Elizabeth Townsend, W. H. Ross, and Henry Wellhoeuer; also appeared by answer to the cross-bill the def'ts Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. N. L. Rockwell. The other def'ts in the cross-bill come not, but make default, and the cross-bill is taken as confessed by such def'ts who have not answered.

This cause comes on for hearing and was heard on original and supplemental bills and answers thereto and replication and
489 on cross-bill and the answers and replication to the answer of the St. Louis & Sandoval Coal & Mining Company, J. B. Mears, O. Townsend, E. Townsend, W. H. Ross, and Henry Wellhoeuer, the answer of Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell, being taken as confessed by the complainant in the cross-bill, and all

the evidence taken by depositions and the evidence taken before J. E. Bryan, master in chancery, as well as the evidence on a former trial on the original bill, taken down by E. L. Stoker, and sundry deeds and records of this court, and the court, having heard the same and having heard arguments of the solicitors of the several parties, takes this cause under advisement.

August 25, 1885, being the third Tuesday of the August term of this court, the court, having duly considered the evidence introduced in this cause, as well as the arguments of the solicitors, and being now fully advised, does find that the material allegations in the cross-bill herein are true, and that the allegations in the sworn answer of Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell to said cross-bill are also true; that the following-named def'ts in said cross-bill, to wit, Isaac Main, L. Noland, Jacob Lichty, C. N. Rockwell, dec'd, now represented by his adm't'x, Mrs. C. N. Rockwell; Charles Reinhardt, Francis H. Edwards, now represented by his executrix, Mrs. E. Edwards; Henry Wellhoeuer, and Frank Seymour, are the only stockholders in the St. Louis & Sandoval Coal & Mining Company who paid anything on their said stock, and that they are the only parties or stockholders who have any interest in or right to determine how the assets, if any, of said company, which has been dissolved by the decree of this court, shall be disposed of, to whom, and for what consideration; that the other defendants in said cross-bill, to wit, Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B.
490 Mears, William H. Ross, True N. Blackman, and George W. Wharton, never paid anything for their supposed stock in said St. Louis & Sandoval Coal & Mining Company, and if any such stock was issued to them or either of them it was wrongfully and fraudulently done and neither of them had any interest in the assets of said company nor any right to interfere with the disposition of such assets, and that they or some of them have fraudulently confederated and wrongfully used the name of said St. Louis & Sandoval Coal & Mining Company in the prosecution of suits for the possession — and injuries to what was once the property of said company, in total disregard of the wishes and interests of the various stockholders of said company, and that they should be enjoined from using said name of said company and from prosecuting any such suits.

That at the instance and upon the motion of the said valid stockholders in said St. Louis & Sandoval Coal & Mining Company, to wit, Francis H. Edwards, Lambert Nowland, Henry Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and C. N. Rockwell, one George W. Hered was by this court appointed to receive the property of said company. Under the direction and with the advice and consent of said various stockholders he, the said George W. Hered, on the 28th day of Sept., 1878, sold and conveyed to one Isaac Main all the property of said company, to wit, the south half of four acres of land north of the right of way of the O. & M. railway and adjoining Primmer's addition to the village of

Sandoval and running north as far as Scott street in said addition and east far enough to contain four acres, with the exception of the streets to be continued through the said four acres from said Primmer's addition eastward, in the west half of the northeast quarter of section seventeen, T. 2 N., R. 1 east, in Marion Co., Ill., it being the same land in bill and cross-bill described, and also the buildings, mining fixtures, and all right to mine coal in certain lots and lands described in bill and cross-bill.

491 That the said Isaac Main bought said property in cross-bill described at the instance and request of all the valid stockholders of said St. Louis and Sandoval Coal and Mining Company for the purpose, if possible, of selling the same for enough to pay of- the indebtedness of said company, which then amounted to over two thousand dollars, so as to save said valid stockholders from further liability for such debts, and that said Main afterwards, at their instance and request, sold and conveyed all the said property in consideration of the sum of $2,465.30, paid by the complainant in said cross-bill to said complainant, The Sandoval Coal & Mining Company, which said sum of $2,465.30 was all said property was then worth and more than it was worth for any purpose other than mining purposes, after an outlay of a large sum of money to make it valuable for that purpose.

That the Sandoval Coal & Mining Company, the complainant in said cross-bill, soon after its purchase of said property from said Main, to wit, in the spring of 1879, took possession of said land and property and, with the consent and under the advice of all of said valid stockholders of said St. Louis & Sandoval Coal & Mining Company, sunk a coal shaft, erected buildings and machinery thereon, and expended in sinking said shaft and erecting such buildings and other permanent fixtures and machinery over the sum of twenty-five thousand dollars, all of which was done with the knowledge, consent, direction, and acquiescence of said valid stockholders, and no objection to such improvements was made or any title claimed to said property by even the insolvent or from solvent or pretended stockholders until long after said expenditures had been made, and that such expenditures were made in good faith under the belief that the title to said property was perfect in said complainant in cross-bill; that the complainant in cross-bill owns other lands, buildings, and improvements and mining rights in the immediate vicinity of and connected with the land, &c., in

492 controversy in this suit, both by buildings and machinery on the surface and by works and passages underground, which would be comparatively valueless to complainant in cross-bill if its title to said two acres of land were not perfected. It is therefore ordered, adjudged, and decreed by the court—

1st. That the defts in the cross-bill, Andrew Roll, Johnson A. Power, Albert A. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman, and George N. Wharton, are not equitable or valid stockholders in said St. Louis and Sandoval Coal & Mining Company, and that they have no interest

in the assets of said company, and have no right to interfere with the application of any such assets, nor to sue for the same.

2nd. That the defts in the cross-bill, Margaret E. Edwards, as executrix of Francis H. Edwards, dec'd, and Lambert Noland, Henry Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. C. N. Rockwell, as the adm't'x of the estate of C. N. Rockwell, deceased, are the only equitable and valid stockholders in said St. Louis & Sandoval Coal & Mining Company, and have full right and power to dispose of all the property of said company which has been dissolved by the decree of this court in original bill in this cause at a former term of this court.

3rd. That the said equitable and valid stockholders, to wit, Margaret E. Edwards, as executrix of Francis H. Edwards, dec'd, Lambert Nowland, Henry Wellhoeuer, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. L. N. Rockwell, as administratorix of the estate of C. N. Rockwell, dec'd, and they are hereby ordered to execute and deliver to the complainant in the cross-bill the Sandoval Coal & Mining Company — valid deed of conveyance in the name of the St. Louis & Sandoval Coal & Mining Company for the said property, to wit, the south
493 half of four acres of land on the north of the right of way of the Ohio & Mississippi railway and adjoining Primmer's addition to the town (now village) of Sandoval and running north as far as Scott street in said addition and east far enough to contain four acres, with the exception of the streets to be continued through said four acres from said Primmer's addition eastward in the west half of the northeast quarter of section seventeen (17), T. 2 N., R. 1 east, in Marion county, Illinois; also for the mining rights and royalty in and to certain lands and lots conveyed by sundry persons to Ozias Townsend and described in deeds recorded in Recor- Book D D, commencing on page- 74 and 90, of Deed Records of said Marion county, and conveyed by said Ozias Townsend to the said St. Louis & Sandoval Coal & Mining Company, and by George W. Hered, as receiver, to said Isaac Main, all in Marion county, Illinois, by the fifteenth day of September, A. D. 1885, and in default of such deed being made and delivered as aforesaid by the day aforesaid that the master in chancery of this court execute such deed of conveyance and deliver the same to said Sandoval Coal & Mining Company.

4th. That the said St. Louis & Sandoval Coal & Mining Company, its agent and attorneys, and all other persons in its name or behalf be, and the same are hereby, perpetually restrained and enjoined from prosecuting any and all suits against the Sandoval Coal & Mining Company, either ejectment for said property or trespass to said property, and that the ejectment suit No. forty-five, of this term of this court, and the suit for trespass No. 54, of this term be, and they are hereby, restrained and their prosecution perpetually enjoined and said suits dismissed at the costs of the plaintiff.

It is further ordered by the court that all the costs that have accrued herein, both those supplemental bills in the original bill and
— that execution may issue for the same in the name of the
494 complainants in the original bill.

Appeal prayed by the defendants in the cross-bill. Appeal allowed upon said def'ts in cross-bill filing within sixty days from this date, August 25th, 1885, certificate of evidence, and an appeal bond in proper form in the sum of one thousand dollars, with good and sufficient security, to be approved by the clerk of this court.

The above and foregoing decree was filed August 26th, 1885.

JOHN B. LEWIS, *Clerk.*

The above and foregoing decree approved by—

WILLIAM H. SNYDER, *Judge.*

STATE OF ILLINOIS, } ss:
Marion County, }

I, James B. Lewis, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and correct copy of the original decrees, report of receiver, orders of court at the February term of Marion county court, 1881, February term, 1883, February term, 1885, and August term, 1885, in the cause of Francis H. Edwards *et al. vs.* The St. Louis & Sandoval Coal & Mining Company *et al.*

In witness whereof I hereunto subscribe my name and
[SEAL.] affix the seal of the Marion county circuit court this the 21st day of December, A. D. 1887.

JAMES B. LEWIS,
Clerk of the Circuit Court, Marion County, Illinois.

495 Then, afterwards, to wit, on the seventh day of February, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, the following proceedings were had in said court in said cause and entered of record, to wit:

OZIAS TOWNSEND *v.* ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY, Sandoval Coal and Mining Company, Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, Executrix of the Last Will of Francis H. Edwards, Deceased, and Lucinda N. Rockwell, Executrix of Last Will and Testament of C. N. Rockwell, Deceased.	In Chancery.

And now, on this day, this cause being called for trial and the complainant appearing by James Carr, his solicitor, and the defendants appearing by M. Schaeffer, their solicitor, and the parties having announced themselves ready for trial, this cause was heard on amended bill and the answer of the Sandoval Coal and Mining Company and the answer of Charles Reinhardt *et al.* and the replications to said answers and on depositions and record evi-
496 dence filed herein, and the court, Judges Gresham and Allen, sitting in bank, having heard the same and having heard

the arguments of the solicitors of the respective parties and being now fully advised, doth find that there is no equity in the amended bill. It is therefore ordered, adjudged, and decreed by the court that this cause and the amended bill be, and it is hereby, dismissed, and that the complainant herein, Ozias Townsend, pay all the costs that have accrued herein, to be taxed by the clerk of this court, for which execution may issue.

Afterwards, to wit, on the ninth day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and ninety-one, the following further proceedings were had in said court in said cause and entered of record, to wit:

OZIAS TOWNSEND *v.* ST. LOUIS AND SANDOVAL COAL & MINING COMPANY *et al.*	In Chancery.

On motion of complainant an appeal to the Supreme Court of the United States is allowed complainant on his entering into bond to the defendants in the penalty of one thousand dollars on or before the 7th day of February next.

Then afterwards, to wit, on the twenty-eighth day of January of the year last aforesaid, came again the complainant and filed in the clerk's office of said court his appeal bond herein; which said appeal bond is as follows, to wit:

497 Know all men by these presents that we, Ozias Townsend, as principal, and Fred. Weinman and George C. Schmidt, as sureties, are held and firmly bound unto Saint Louis and Sandoval Coal and Mining Company, Sandoval Coal and Mining Company, Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of last will of C. N. Rockwell, deceased, in the sum of one thousand dollars, to be paid to the said St. Louis and Sandoval Coal and Mining Company, Sandoval Coal and Mining Company, Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, James Lichty, Margaret E. Edwards, executrix of last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of last will of C. N. Rockwell, deceased, their executors or administrators; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this 22 day of January, A. D. 1891.

Whereas the above-named Ozias Townsend hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the circuit court of the United States for the southern district of Illinois on the 7th day of February, 1889, in a certain cause wherein Ozias Townsend is complainant and the Saint

Louis and Sandoval Coal and Mining Company, Sandoval Coal and Mining Company, Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, executrix of last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of last will of C. N. Rockwell, deceased, are defendants:

Now, therefore, the condition of this obligation is such that if the above-named Ozias Townsend shall prosecute his said appeal
498 to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

OZIAS TOWNSEND. [SEAL.]
FRED. WEINMAN. [SEAL.]
GEORGE C. SCHMIDT. [SEAL.]

Sealed and delivered in the presence of—
JOSHUA W. HUGHES.

Fred. Wienman and George C. Schmidt, obligors in the within bond, being duly sworn, each on his oath deposes and says that he resides as stated therein and is worth over and above all his debts and liabilities the sum of two thousand dollars, and that he owns real estate to that amount subject to execution within the southern district of Illinois.

FRED. WIENMAN.
GEORGE C. SCHMIDT.

Subscribed and sworn to by said Fred. Wienman and George C. Schmidt, the above-named affiants, this 22d day of January, A. D. 1891, before me, at office, in the city of St. Louis.

A. P. SELBY,
[SEAL.] *Clerk U. S. Cir. Court, E. Div. E. Dist. Mo.*

I certify that the above bond is good and ample.

A. P. SELBY, *Clerk.*

Filed January 28, 1891.

JAMES T. JONES, *Clerk.*

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, James T. Jones, clerk of the circuit court of the United
499 States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain cause wherein Ozias Townsend is complainant and The St. Louis and Sandoval Coal and Mining Company, Sandoval Coal and Mining Company, Isaac Main, Lambert Nowland, Frank Seymour, Charles Rheinhardt, Jacob Lichty, Margaret E. Edwards, executrix of last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of last will of C. N. Rockwell, deceased, are defendants,

as truly and completely as the same appear of file and record in my said office.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Springfield, in said district, this fifth day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the one hundred and fifteenth year.

JAMES T. JONES, *Clerk.*

500 Supreme Court of United States.

UNITED STATES OF AMERICA, *ss:*

To the St. Louis and Sandoval Coal and Mining Company, Sandoval Coal and Mining Company, Isaac Main, Lambert Noland, Frank Seymore, Charles Rhinehardt, Jacob Lichty, Margaret E. Edwards, executrix of last will of Francis H. Edwards, deceased, and Lucinda N. Rockwell, executrix of last will of C. N. Rockwell, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of October next, pursuant to an appeal prayed in the circuit court of the United States for the southern district of Illinois, wherein Ozias Townsend is appellant and you are appellees, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Hon. William J. Allen, district judge of the United States for the southern district of Illinois, at Springfield, in said district, this seventh day of September, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the one hundred and sixteenth year.

WILLIAM J. ALLEN,
District Judge U. S., South. District of Illinois.

501 [Endorsed:] 5, p. 468. Ozias Townsend *vs.* St. Louis & Sandoval Coal & Mining Co. *et al.* Salem & Sandoval, Ill.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

Received this citation on the 11th day of September, 1891, at Springfield, Illinois, and served same upon the St. Louis, Sandoval Coal and Mining Company by reading and delivering a true copy of the same to Charles Rhinehardt, treasurer of said company, the president of said company not being found in my district; and upon the Sandoval Coal and Mining Company by reading and delivering a true copy of the same to James Martin, president of said company; and upon Isaac Main, Lambert Noland, Charles Rhinehardt, Mar-

garet E. Edwards, as executrix of last will of Francis H. Edward-, deceased, and Lucinda N. Rockwell, as executrix of last will of C. N. Rockwell, deceased, by reading and copy; and upon Jacob Lichty by delivering a true copy of the same to Mrs. Jacob Lichty, wife of said Jacob Lichty, and explaining the contents thereof to her. Frank Seymore not found in my district.

This 12th day of September, A. D. 1891.

C. P. HITCH,
U. S. Marshal,
By J. W. NORVELL, *Deputy.*

Endorsed on cover: Case No. 14,869. S. Illinois C. C. U. S. No. 308. Ozias Townsend, appellant, *vs.* The St. Louis and Sandoval Coal and Mining Company, The Sandoval Coal and Mining Company, *et al.* Filed September 30, 1891.

Office Supreme Court U. S.
FILED.
MAR 1 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.

OZIAS TOWNSEND,
Appellant,

vs.

THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY ET AL.,
Appellees.

No. 308. In Equity.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF IN BEHALF OF OZIAS TOWNSEND, APPELLANT.

UPTON M. YOUNG,
Counsel for Appellant.

A. R. FLEMING & CO., PRINTERS, 522 N. Third Street, ST. LOUIS, MO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

OZIAS TOWNSEND,
Appellant,

vs.

THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY ET AL.,
Respondents.

No. 308. In Equity.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF IN BEHALF OF APPELLANT.

I.

STATEMENT OF THE CASE.

This is a suit in equity, brought by Ozias Townsend (Rec., p. 19), a citizen of Missouri, against the St. Louis & Sandoval Coal & Mining Company (an Illinois corporation), and the Sandoval Coal & Mining Company (an Illinois corporation), and against Isaac Main, Lambert Noland, Frank Seymour, Charles Reinhardt, Jacob Lichty, Margaret E. Edwards, ex-

ecutrix of last will of Francis H. Edwards (deceased), and Lucinda N. Rockwood, executrix of last will of C. F. Rockwood (deceased), all citizens of Illinois.

In the year 1877 the complainant originated the idea of developing a coal mine at Sandoval, Marion county, Illinois, where all the individual defendants to this bill then resided. Townsend ascertained from the Geological Reports of Illinois, and from other sources, that coal in large paying quantities could be obtained. At this time no coal mine had been developed in that section of Illinois. The enterprise was new, and the experiment novel. Capital was slow to take hold of a doubtful scheme. Townsend, however, bought lands, and then the royalty or mining rights in other lands—about a thousand acres—near the Sandoval Junction of the Ohio & Mississippi and Illinois Central Railroads. He employed counsel to properly organize the St. Louis & Sandoval Coal & Mining Company, and devoted much of his own time and money in developing the enterprise. Townsend transferred to it all the lands and mining rights which he had acquired. By the 1st of May, 1878, all arrangements for the success of the mine had been completed.

The following persons subscribed for stock (p. 20): Isaac Main, 10 shares; Noland, 1; Lichty; 2; Rockwell, 3; Roll, 2; Reinhardt, 5; Edwards, 5; Power, 2; Wellhoerner, 50; Ross, 1; McCabe, 10; Hill, 1; Sheals, 10; Collins, 5; Mears, 2; and Ozias Townsend, your orator, 391; making, in all, $50,000. By agreement with said subscribers said Townsend was to hold 380 of the shares subscribed by him—as trustee for said corporation—and was (p. 21)—as soon as he could find purchasers—to sell said stock, and turn the

proceeds into the treasury of the company for its benefit.

II.

THE PLEADINGS—THE BILL.

The amended bill (p. 20) avers that the capital stock of this company was $50,000, divided into 500 shares of $100 each. The principal office was at Sandoval, Illinois; the duration of the company was to be 99 years. The number of directors was five, consisting of Ozias Townsend (your orator), Isaac Main, John B. Mears, Henry Wellhoerner and James Sheals. Your orator was chosen president, and the president was *ex officio* superintendent of the business of the company.

The bill avers that, between July 1st, 1877, and January 1st, 1878, said Townsend spent all of his time in securing mining rights for said company and in getting it legally organized; that during the period named he secured 436 mining rights to himself, as trustee for said company, for which he was getting said company organized, he paid out of his own money $200, in addition to time and labor spent by him in securing said mining rights; that by agreement between said subscribers for stock and said Townsend, made before the latter began to organize said company or to secure said mining rights, Townsend was to be paid by said company, when organized, a fair and reasonable compensation for his time and services in doing so, and to have the money thus expended by him refunded. After the company was organized said Townsend purchased with his own money two acres of land near Sandoval, Illinois, and on the 9th of January, 1878,

conveyed in fee said land to the corporation, for the purpose of sinking thereon a coal shaft to coal under said land, and under other lands adjacent, upon which he had previously secured mining rights.

The bill avers that, on the 20th day of December, 1877, at a regular meeting of the directors of said corporation, held in the City of St. Louis, at 614 North Ninth street, where all directors were present, on motion of . . . . . , the salary of said Townsend, as president and *ex officio* superintendent of said corporation, was, by resolution, fixed at $150 per month, said salary to commence on January 1st, 1878, and the necessary expenses incurred by him while traveling for the company were to be repaid him. Said Townsend (p. 22) did not participate in the adoption of said resolution. By-laws were adopted at said meeting.

The bill avers that said Townsend accepted the office of president and *ex officio* superintendent, and at once entered upon and faithfully performed all the duties thereof from time of his election to the 25th day of January, 1886, when the Supreme Court of Illinois affirmed the final decree of Marion county, Illinois, dissolving said corporation.

The bill avers that, under the by-laws, the president shall be *ex officio* superintendent of the affairs and business of the company, shall sign all papers relating to company where a seal is used, shall order special meetings of directors, at his option, or when required to do so, in writing, by any three directors, and shall perform the duties which executive officers of such companies are required to do. Under said by-laws three directors constituted a quorum, and said board had

power to make needful rules and regulations. Under said by-laws special meetings of the board could be called by the president at St. Louis, or at such other place as deemed expedient, and all meetings, when signed and ratified by a majority, were as binding as though held at regular place of meeting in Illinois.

The bill avers that it was deemed expedient, by a majority of the directors, to have a special meeting at the office of the company, at the East St. Louis Hotel, in the City of East St. Louis, Illinois; that by authority of the by-laws the said president called, at the written request of three of the directors, a special meeting of the board, to be held at the East St. Louis Hotel, in the City of East St. Louis, Illinois, at 5 o'clock, on the . . . . . day of March, 1878; due notice in writing of the time and place of holding said meeting was given by the president, said notice stating the purpose for which the said meeting was to be held, among other things, to examine and audit (p. 23) the account which Townsend had against the company for securing mining rights for it, and the money expended by him in getting said corporation organized; that, in pursuance of said call, a special meeting of said board of directors was held at the time and place specified; all of the directors were present, except Isaac Main; that at said meeting James Sheals tendered his resignation as director, which was accepted, and under the by-laws True N. Blackman was chosen a director to fill the vacancy, and took his seat as a member of the board.

The bill avers that Townsend presented to said board his account for the sum of $12,050, as compensation for his services and for money expended by him for

the company, and asked to have the same examined and audited by the directors; he retired from the board, and did not participate in the deliberations of said claim. One of the directors, Mears, offered the following preambles and resolutions:

"WHEREAS, Ozias Townsend has devoted a large share of his time and attention to the organization of the St. Louis & Sandoval Coal & Mining Co., and has expended freely his money in traveling and promoting its interests, and securing for the said company large and valuable franchises of coal and mining privileges; and

WHEREAS, he has devoted his time from inception of the enterprise up to the 1st of January, 1878, and for all of which no compensation has been rendered him; and,

WHEREAS, it is proper he should be paid for his labor and be fully reimbursed for the time and money expended; now, therefore,

Be it resolved, first, that in full satisfaction for such services and expenditures and for his attention to the business of this company up to and prior to the 1st day of January, 1878, the said Ozias Townsend is hereby allowed, and this company binds itself to pay to him, the sum of ten thousand dollars, the same to be receipted for by him as in full compensation for said services, as aforesaid; and if he shall wish to be endorsed upon the stock held by him as a member of the association as so much paid on account of calls made and to be made on such of the stock as may be held or indicated by him, and such endorsement by the secretary and treasurer of this company shall be held and accounted for as a receipt in full from him for calls on said stocks to the amount of ten thousand dollars, as aforesaid.

Be it resolved, second, the secretary and treasurer is hereby (p. 24) authorized and directed to endorse upon the stock held by said Townsend, as he shall indicate, payments of calls on the same to the extent aforesaid, and, in the event of such endorsement failing, then he shall have a valid claim against this company to that extent for such services hereby acknowledged to be rendered, but not otherwise.

Be it resolved, third, that the said Townsend be required to sign duplicate receipts for the reception of the amount endorsed on his stock, as aforesaid, and that one, together with copy of these resolutions attached, be retained in the main office at Sandoval, and one to be retained on file by the secretary, at the office at the City of St. Louis."

Which preambles and resolutions, after said board of directors had carefully examined the same, were unanimously adopted, and thereby said directors adjusted said claim at $10,000.00, and recognized the same as a valid claim against the said corporation; and that said Townsend accepted said settlement as proper and just.

The bill avers that defendant Main, desiring to prevent Townsend from collecting said claim, and also to prevent him from collecting his salary and traveling expenses, combined with other stockholders in said corporation to wreck said corporation under the forms of law, and buy any of its assets at a sum very greatly below their real value, so that said assets ostensibly would all be gone when Townsend took steps to collect his claim. The bill avers that, on the 27th of June, 1878, said Isaac Main, Frank Seymour, Francis H. Edwards, Lambert Noland, Chas. Reinhardt, Jacob Lichty, and

C. N. Rockwell, of the county of Marion, and State of Illinois, and Henry Wellhoerner, of the City of St. Louis, Missouri (but said Wellhoerner, after ascertaining the object of the suit, withdrew), filed their bill in chancery in the Circuit Court of Marion County, Illinois, against the St. Louis & Sandoval Coal & Mining Company (which is hereafter for convenience called "the old company"), and against said Townsend (p. 25), and all other subscribers to the capital stock who resided out of Illinois. All of said subscribers, including Townsend, resided in the City of St. Louis, and State of Missouri, and out of the jurisdiction of said court; said bill alleged the incorporation of the old company, the names of the subscribers, and the number of shares subscribed by each, and further alleged that, on the 10th of January, 1878, said company had made a contract with Frank Seymour to sink a coal shaft on said land down to the vein of the coal thereunder, which he was to do on certain terms and for a certain price to be paid by the company; that Seymour began sinking the said shaft, and continued it until the 10th of March, 1878, it being then down to 114 feet when he stopped said shaft, on the ground that said corporation failed to perform its part of said contract; that said corporation was indebted to Seymour for said shaft about $1,700.00, and to other persons about $1,300.00, making a total indebtedness of about $3,000.00, without including said debts of $10,000.00 which had been audited by said board of directors in favor of Townsend. (The bill continued as follows, pp. 25–35): "That the whole cost of sinking said shaft down to coal would be about $10,800.00; that on the 14th day of February, 1878, an assessment of five per cent. on said capital

stock had been made, and the following were the only stockholders who paid said assessment, viz.: Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Reinhardt, Francis H. Edwards, and Henry Wellhoerner, the other stockholders failing to pay, and it alleged that the stock held by the other stockholders, except that held by Mrs. McCabe, Dr. Ross, and Capt. Hill, was, on the 29th day of April, 1878, forfeited; and it was further alleged as follows: 'Your petitioners further show unto your honors that some time between the 23d day of March and the 6th day of April, A. D. ——, the directors, except Isaac Main, of said company, by resolution, without any consideration, and fraudulently, your petitioners charge, acknowledged an indebtedness of $10,000.00 to said Ozias Townsend for services claimed to be rendered and money expended for said company, which said services and money, your petitioners charge, said company was not liable to him for, and which services he never rendered said company, nor expended money for said company, which said company was liable to him for; and in said resolutions, if he desired, said $10,000.00 should be endorsed upon the stock held by him as a member of said company; that afterwards said Ozias Townsend had issued to his wife, Elizabeth E. Townsend, $5,000.00 paid up stock in said company upon said pretended indebtedness; $4,000.00 to one George W. Wharton, and $1,000.00 to True W. Blackman, making the said $10,000.00, for which the said Elizabeth E. Townsend, George W. Wharton, and True W. Blackman paid nothing to said company, and for which said amount the said Elizabeth E. Townsend, George W. Wharton, and True W. Blackman

now pretend to own paid-up stock in said company to their said amounts respectively."

It was further alleged that said mining rights were conveyed to your orator in trust for said corporation, with a condition that the shaft should be sunk upon said tract of land within two years from the 6th day of November, 1877; otherwise they were to become forfeited; that said mining rights were worth considerable, provided said shaft was sunk down to the coal thereunder within the time limited, as aforesaid, but that in the unfinished condition in which said shaft was when said bill was filed said mining rights and tract of land were not worth sufficient to pay off said indebtedness of said corporation; that said mining rights and tract of land, with the buildings thereon, were all the property or effects which said corporation had; and it was further alleged that the plaintiffs in said bill believed that the stockholders in said corporation whose stock had been declared forfeited, as aforesaid, were still liable for the debts thereof, notwithstanding the forfeiture of their stock. It is then alleged that nearly all of the stockholders in said corporation were insolvent, and in the condition of said corporation it would be useless for it to resume business or to attempt to complete the enterprise for which it had been organized. The bill then prayed that the affairs of said corporation should be wound up, a receiver appointed, and its property sold, and the proceeds applied to the payment of its said debts, and if the same should be insufficient to pay said debts, then that the stockholders should be assessed to pay the balance, and that said corporation should be dissolved.

Your orator further shows that no summons was

served upon your orator, either in his individual capacity or in his capacity as president of said corporation, and neither he nor said corporation appeared to said bill; that the summons issued in said case was served upon said Isaac Main as a director in said corporation, and the Supreme Court of the State of Illinois held said service illegal, and the decree passed thereon void, as hereinafter stated; that at the August term, 1878, of said Circuit Court of Marion County, Illlnois, a decree *pro confesso* was rendered against the defendants to said bill, and a final decree by default, finding the facts alleged in said bill to be true, and granting the relief prayed for, and in said decree George W. Hered was appointed receiver of said corporation, to take charge of all the property, credits and effects of said corporation, and sell the same at public or private sale, giving due notice of said sale, for cash, and to make conveyance of said property upon such sale. Said Hered qualified under said appointment, and took upon himself the duties of receiver of said corporation, and on the 28th day of September, 1878, he, at a pretended public sale, sold all of the property belonging to said corporation to said Isaac Main, for the sum of $200.00, he being the only bidder, and he made and delivered to said Main a deed thereto properly acknowledged, and on the 11th day of February, 1879, said receiver reported said sale to said court, which, on the 11th day of February, 1879, confirmed said pretended sale. Your orator avers that said property, at the time of said pretended sale to Isaac Main, as aforesaid, was worth the sum of $20,000.

Your orator further shows that afterwards, to-wit: on the 24th day of March, 1881, an appeal was taken

from said decree of the Circuit Court of Marion County, Illinois, to the Supreme Court of said State, at Mount Vernon, in said State, and on the 15th day of August, 1882, by the consideration and judgment of said Supreme Court, said decree of said Circuit Court was reversed, on the ground that the service of the summons issued in said case upon said Isaac Main, as a director in said corporation, when he was one of the plaintiffs in said case, was not a legal service of said summons upon said corporation, and that the Circuit Court had no jurisdiction over said corporation, and that the decree passed on said service was null and void, and said Supreme Court remanded said case to said Circuit Court for further proceedings therein, according to law.

Your orator shows that after said case had been remanded to said Circuit Court, as aforesaid, and he and several other defendants filed their joint and several answer to the plaintiffs' said bill, and, after admitting certain allegations in said bill and denying others, they denied said allegations in the plaintiffs' bill, which is hereinbefore quoted, in regard to the services claimed to have been rendered for said company and money expended therefor, in the following words, viz: "They (said defendants) deny that the board of directors of said company wrongfully acknowledged an indebtedness to said Ozias Townsend, as set forth in the bill;" and in the separate answer said St. Louis & Sandoval Coal & Mining Company, after admitting certain allegations in said bill to be true, and denying other allegations, it referred to said allegations in plaintiffs' bill in the following language, viz: "This defendant denies that it fraudulently acknowledged an

indebtedness to the said Ozias Townsend, or issued paid-up stock to him, without a sufficient consideration, or anybody else." Your orator says that the said allegations are all and the only allegations in said bill and answers in regard to the indebtedness of said corporation to your orator.

Your orator further shows that the said case was heard by said Circuit Court at the 1883 term thereof, to-wit: on the 14th day of July, 1883, upon said bill, answers, and replications thereto, and evidence, and thereupon, on the 7th day of August, 1883, it "found that said corporation had, on the 10th day of March, 1878, ceased to prosecute the work for which it was organized, leaving debts unpaid to said Frank Seymour and others (omitting your orator as a creditor, however, to the amount of $24,000); that the business of said corporation was mismanaged by its officers; that it was insolvent, and that it would be useless for said corporation to resume business on account of its financial embarrassment. It thereupon decreed that said corporation be dissolved, and that the appointment of said George W. Hered, receiver, at the August term, 1878, of said court (when said court had no jurisdiction over said corporation, as hereinbefore stated) be, and the same was confirmed, and he was ordered to make further report of his actings and doings as such receiver;" thereupon your orator and the other defendants prayed an appeal to the Supreme Court of the State of Illinois, southern grand division thereof, which was granted, and the appeal duly taken.

Your orator further shows that he was in good faith endeavoring to sell, as trustee, said 380 shares of the capital stock of said corporation, so as to raise money

with which to carry on the sinking of said shaft, and preparing the same for raising coal when mined, and utilizing said mining rights, as he had agreed with the subscribers to the capital stock of said corporation to do, as hereinbefore stated, and he had bargained with George W. Wharton and William Manning, two solvent and responsible men, for the sale of 170 of said shares, and he was just on the point of transferring said 170 shares to said Wharton and Manning, and receiving the money therefor, which he would have turned into the treasury of said corporation, for its use and benefit, and thus have enabled said corporation to pay for sinking said shaft and the necessary improvements in order to commence mining coal successfully, when he was interfered with and prevented from carrying out said bargain by the filing of said bill by said Isaac Main and others, as hereinbefore stated; and your orator verily believes, and he so charges the fact to be, that he could, in a comparatively short time, have sold the remainder of said 380 shares of stock to solvent and responsible persons, and turned into the treasury of said corporation the proceeds of such sale, and in that event it would have had abundance of money with which to have carried on its business, if he had not been interfered with and prevented by the evil action of said Main and others in filing said bill and prosecuting it to a final decree, as hereinbefore stated.

Your orator further shows that, in pursuance of his election as president and *ex officio* superintendent of said St. Louis & Sandoval Coal & Mining Company, he faithfully performed all the duties incumbent on him as such officer from the first day of January, 1878, until the affirmance by the Supreme Court

of the State of Illinois, on the 25th day of January, 1886, of said decree of the Circuit Court of Marion County, Illinois; that the board of directors of said corporation fixed his salary as president and *ex officio* superintendent at $150 per month; that, in addition to his salary, said corporation agreed to refund to your orator his necessary traveling expenses while away from home on the business of said corporation, he all the time residing in the City of St. Louis, Missouri; that between the first day of January, 1878, and the 27th day of March, 1878, he paid, laid out, and expended the sum of $510, for the use and benefit of said corporation; that in said amount is included the sum of $200 which your orator paid to Samuel Ewing on the 9th day of January, 1878, the purchase money for said tract of land upon which said shaft was sunk, as hereinbefore stated.

Your orator avers that said corporation has never paid him said debt of $10,000, or any part thereof, nor has it refunded to him the said purchase money paid to said Samuel Ewing for said tract of land, as aforesaid, or any part thereof, and said corporation still owes him therefor, and the interest thereon from the time that said debts should have been paid.

Your orator further shows that at the February term, 1885, of said Circuit Court, the plaintiffs in said bill filed a supplemental bill, making the Sandoval Coal & Mining Company a party defendant in said case, and it appeared and filed an answer and cross-bill in said case at the same term of said court.

Your orator further shows that, in pursuance of the scheme hereinbefore stated, immediately after the pretended sale of said property belonging to said corpora-

tion to said Isaac Main, as aforesaid—and a portion of the plaintiffs in said case and several other persons, as your orator is informed and believes, united and organized, under the statutes of the State of Illinois, a new corporation, with its chief office at Sandoval, called the Sandoval Coal & Mining Company, to take said property off his hands, including the shaft which said old corporation had commenced sinking, as hereinbefore stated, and to drift from said shaft under the tract of land hereinbefore described to adjoining lands conveyed to your orator in trust for said old corporation, as aforesaid, and to utilize said tract of land, shaft, and mining rights for said new corporation in the same way that said old corporation intended to utilize them, if it had not been interfered with by the bill filed by said Isaac Main and others, stockholders in said old corporation, as hereinbefore stated.

That said new corporation was expressly organized by said Main and others for the purpose of having the property of said old corporation transferred and conveyed to it by and through the void sale thereof to him by said George W. Herod, as receiver, as hereinbefore stated, and in pursuance of the scheme to sell out and divert all of the assets out of said old corporation and vest them in said Main, and thus prevent your orator from collecting said sum of $10,000, which had been audited and allowed in his favor by the board of directors of said old corporation, as hereinbefore stated, and also to prevent your orator from collecting his salary and necessary traveling expenses incurred while away from home on the business of said old corporation, as hereinbefore stated; said Main, on the —— day of ——, 1879, transferred and conveyed the said

tract of land upon which the shaft was sunk, as herein stated, said mining rights, and all the assets of said old corporation, which had been pretendingly sold to him by said Herod, as receiver, as aforesaid, at the nominal sum of $200, but really on condition that said new corporation would pay all the debts of said old corporation, except the said debts of your orator; that said new corporation paid all of the debts of said old corporation except your orator's, amounting to the sum of $2,465.30; that the new corporation took said property with full knowledge and notice of the debts which said old corporation was owing to your orator, and also with full knowledge and notice of such scheme to prevent your orator collecting his said debts and claims of said old corporation, as hereinbefore stated, and that said property, at the time of said void sale, was charged with a trust in favor of and liable to your orator, as a creditor of said old corporation, for the payment of your orator's said debts and claims; and also, at the time that said Main transferred and conveyed it to said new corporation, was actually worth eight times more than the debts which it agreed to pay, and which it did pay; that is to say, the actual cash value of said property at said times, respectively, was at least $20,000, and said new corporation was not a *bona fide* purchaser of said property.

Your orator further shows that the Sandoval Coal & Mining Company in its answer admitted all the allegations in said original and supplemental bills of Main and others, and it at the same time filed a cross-bill to said original and supplemental bills, in which it recited the facts, in substance, as hereinbefore stated, and then it alleged that it had in good faith bought said

property from said Isaac Main, and paid all of the debts of the St. Louis & Sandoval Coal & Mining Company, amounting to the sum of $2,465.30, your orator's said debts not being embraced therein; that it had made valuable improvements of and under said tract of land, upon which mining rights had been secured by your orator, as aforesaid, to the amount of $25,000; that the plaintiffs in said case against said old corporation and others were the only legal stockholders therein; that your orator and other individual defendants in said case were not *bona fide* stockholders in said old corporation, and had no right as stockholders therein, and it prayed the court to so decree, and that the plaintiffs in said case were the only valid and legal stockholders in said old corporation who had any right to dispose of its property; that said plaintiffs be ordered to convey, in the name of said old corporation, by a valid conveyance, said tract of land on which said shaft was sunk, and also said mining rights secured by your orator for the use and benefit of said old corporation, as aforesaid, by a day to be fixed by the court, and in default of such conveyance by said parties, that a master in chancery of said court execute a deed of conveyance, and deliver the same to said Sandoval Coal & Mining Company; that said St. Louis & Sandoval Coal & Mining Company be restrained from prosecuting an ejectment suit against said corporation in said court to recover said property; also from prosecuting an action of trespass against James S. Martin and others, officers and agents of said new corporation, for trespassing on said property; also that said original suit against said new corporation be dismissed. Answer was filed to said cross-bill by your

orator, said old corporation, and other defendants, at the February term, 1885, of said court, and a replication to said answer was filed at the same term; and at the August term, 1885, of said court, said case came on for hearing on said original and supplemental bills, and answer thereto and replication, and on said cross-bill and the answers thereto, and replication and the evidence in the case, and on the 25th day of August, 1885, said court passed a final decree, in which it granted the relief to said new corporation which it had prayed for; thereupon your orator, and said old corporation, and other defendants to said original, supplemental and cross-bills, prayed an appeal to the Supreme Court of the State of Illinois, southern grand division thereof, which was granted, and an appeal duly taken to said Supreme Court, and on the 25th day of January, 1886, by the consideration and judgment of said Supreme Court, said decree of said Circuit Court on said original, supplemental and cross-bills were all affirmed.

Your orator further shows that after said original decree *pro confesso* had been held void by the Supreme Court of Illinois, as hereinbefore stated, and, as a consequence, the sale under said decree of the property of said old corporation to said name was also void. There was no new sale of said property under the decree passed on the 7th of August, 1883, when the Circuit Court of Marion County, Illinois, had acquired jurisdiction over said old corporation; and your orator avers that said sale was and is null and void, because the court passing said decree under which said sale was made, had no jurisdiction over said old corporation; that Main acquired no title by said sale, and he could

and did impart no title to said new corporation by his pretended sale to it.

Your orator avers that the point whether said St. Louis & Sandoval Coal & Mining Company was liable to your orator for his time and labor spent and money paid, laid out, and expended in procuring said mining rights to himself, as trustee for said corporation, before the organization thereof, and which would have inured to the benefit of said corporation, if it had not been checked through the interference of said Isaac Main and others, as hereinbefore stated, and also the services and legal fees paid by him in getting said corporation incorporated, as hereinbefore stated, and also his salary as president and *ex officio* superintendent of said corporation, from the first day of January, 1878, until the affirmance by the Supreme Court of the said State, on the 25th day of January, 1886, of said final decree dissolving said corporation, as aforesaid, and his traveling expenses while away from home on the business of said corporation, and also the two hundred dollars purchase money paid to said Samuel Ewing for said tract of land upon which said shaft was sunk, as hereinbefore stated, was not in issue in said cases, or either of them, and was not determined or adjudicated in said cases, or either of them, and your orator is not estopped by the decrees passed in said cases, or either of them, from setting up, asserting and claiming his right thereto as a creditor of said corporation.

Your orator further shows that no money was paid by the subscribers to the capital stock of said corporation, except by the following persons, each of whom paid only five per cent. on the shares respectively subscribed by them: Isaac Main, Lambert Noland, Frank Sey-

mour, Charles Reinhardt, Jacob Lichty, Francis H. Edwards, and C. N. Rockwell; that said Isaac Main owes the sum of $950 on his subscription to the capital stock of said corporation, as hereinbefore stated; Lambert Noland, the sum of $95 on his subscription to said capital stock; Frank Seymour, the sum of $200 on his subscription of two shares to said capital stock; Charles Reinhardt, the sum of $475 on his subscription to said capital stock; Jacob Lichty, the sum of $190 on his subscription to said capital stock; that the estate of Francis H. Edwards, deceased, owes the sum of $475 on the subscription made by said Francis H. Edwards to said capital stock, as hereinbefore stated; that said Francis H. Edwards died since the commencement of said suit, first having duly made and published his last will and testament, wherein he appointed Margaret E. Edwards the executrix thereof, which will was duly admitted to probate in the County Court of Marion County, Illinois, in the year 1883, and thereupon said Margaret E. Edwards qualified as the executrix of said last will and testament, and took upon herself the execution thereof, and she is still acting as such executrix, her administration under said will not being closed yet; that the estate of C. N. Rockwell, deceased, still owes the sum of $285 on the subscription by said C. N. Rockwell to said capital stock, as hereinbefore stated; that said C. N. Rockwell died since the commencement of said suit, first having duly made and published his last will and testament, wherein he appointed Lucinda N. Rockwell the executrix thereof, which will was duly admitted to probate in the County Court of Marion County, in the year 1880, and thereupon said Lucinda N. Rockwell qualified as the executrix of said

last will and testament, and took upon herself the execution thereof, and she is still acting as such executrix, her administration under said will not yet being closed.

Your orator avers that said St. Louis & Sandoval Coal & Mining Company had no property or assets of any kind, and it had none at the time of its dissolution, as hereinbefore stated, except the unpaid balance on said subscription to its capital stock, as herein stated, and the equitable right of your orator as a creditor of said corporation to follow said property which was pretendingly sold by George W. Herod, as receiver, to said Isaac Main, and by said Main to said Sandoval Coal & Mining Company, as hereinbefore stated, and that it would be fruitless to first sue upon his said debts and recover a judgment at law against said St. Louis & Sandoval Coal & Mining Company, and then have an execution issued on said judgment, and returned no property of said corporation could be found whereon said execution could be levied, before filing this bill.

Your orator further avers that said unpaid capital stock, and said unpaid balance on said capital stock, and also said property pretended to be sold by said George W. Herod, as receiver, to said Isaac Main, and sold by him to said Sandoval Coal & Mining Company, were and are a trust fund for the payment of your orator's said debts against said St. Louis & Sandoval Coal & Mining Company, and that said sale to said Main, and the sale by said Main to said Sandoval Coal & Mining Company, as aforesaid, was and is null and void, and it took said property with full notice and knowledge that your orator had a just and equitable claim thereon as a creditor of the St. Louis & Sandoval Coal & Mining Company, for the payment of his said

debts against said corporation, and it has ever since held and still holds said property in trust for the payment of your orator's said debts.

Your orator further avers that the $2,465.30 which said Sandoval Coal & Mining Company paid, or claims to have paid, to the other creditors of the St. Louis & Sandoval Coal & Mining Company for said property is not, and was not, more than one-eighth the actual value of said property at the time the same was taken possession of by the said Sandoval Coal & Mining Company, and that it would be harsh and grossly unjust, inequitable and oppressive on your orator, as a creditor of said St. Louis & Sandoval Coal & Mining Company, to allow said Sandoval Coal & Mining Company to retain said property and reap the fruit, as it has been doing ever since it took possession, and still is doing, of the labor done and money spent by your orator in procuring said mining rights, organizing said St. Louis & Sandoval Coal & Mining Company into a corporation, and paying the purchase money for said tract of land upon which said shaft has been sunk, as hereinbefore stated, without paying your orator's said debts.

Your orator further shows that all of the subscribers to the capital stock of said St. Louis & Sandoval Coal & Mining Company, except those who are made defendants to this bill, have been, ever since they respectively subscribed, and they still are, residents of the City of St. Louis, and citizens of the State of Missouri, and are out of the jurisdiction of this court, or your orator would make them parties defendant to this bill.

Your orator further avers that he is the only creditor of said St. Louis & Sandoval Coal & Mining Company remaining unpaid.

Your orator is ready and willing, and he hereby offers, to contribute his proportionate part towards the payment of his said debts, if the court shall be of opinion and hold that he was a stockholder in the capital stock of the St. Louis & Sandoval Coal & Mining Company to the extent hereinbefore stated; in consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, your orator invokes the aid of this honorable court.

To the end, therefore, that the said defendants to this bill may be required to make full, true, direct and perfect answer to the charges in the same, but not under oath, the answer under oath being hereby waived, and upon the hearing of this case that this honorable court will pass a decree requiring said individual defendants, as subscribers to and holders in the capital stock of said St. Louis & Sandoval Coal & Mining Company, to pay the unpaid balance on their respective shares in said capital stock, as hereinbefore stated, and that it will declare said pretended sale by said George W. Herod, as receiver of said St. Louis & Sandoval Coal & Mining Company, to said Isaac Main, and by said Main to Sandoval Coal & Mining Company, null and void, and said Sandoval Coal & Mining Company a trustee of said property for the payment of your orator's said debts, and if said Sandoval Coal & Mining Company shall fail or refuse to pay your orator's said debts, or such part thereof as may be adjudged against it to pay, by a day to be fixed by the decree of this honorable court, that then said property,

or so much thereof as may be necessary to pay said debts, shall be put up and sold to the highest bidder for cash, and the proceeds of such sale applied to the payment of said debts, and that your orator may have such further and other relief in the premises as the nature of his case shall require, and as to your honors shall seem meet."

III.

ANSWER OF SANDOVAL COAL & MINING COMPANY.

The answer of the new company is as follows (pp. 35 to 46):

"This defendant, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said amended bill contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

It believes that it is true that the complainant and others did attempt to organize the St. Louis & Sandoval Coal & Mining Company, in December, 1877, substantially as in amended bill stated, and that parties subscribed for the capital stock, as in bill stated; but this respondent submits to your honor whether the facts as stated in amended bill do not show that said St. Louis & Sandoval Coal & Mining Company (hereinafter for convenience called the 'old company'), was ever legally organized under the laws of the State of Illinois, and whether it could enter into any valid contract for services or otherwise.

Further answering, the respondent says that it knows nothing of its own knowledge about services performed or money expended for said old company by said complainant, as in bill charged, but upon information and belief this respondent denies that said complainant spent, from July 1st, 1877, to January 1st, 1878, or any part thereof, in taking or securing mining rights for said old company, or in getting up its organization under the statutes of the State of Illinois; denies also that complainant took or secured 436 or any other number of mining rights for the use of said old company; and this respondent denies that complainant paid, laid out or expended, of his own money, the sum of $2,700, or any other sum, in securing said mining rights or the incorporation of said company, as in said amended bill stated. This respondent knows nothing of any agreement between the complainant and the subscribers for stock for pay or compensation for his time and services, as in said amended bill stated.

Further answering, this defendant denies that said complainant paid Samuel Ewing, with his own money or otherwise, $200, or any part thereof, for these two acres of land in bill described, but avers the truth to be that this defendant paid said Ewing for said land; and this defendant further denies that the said complainant obtained any valid title to any mining rights for said old company, but states the truth to be that a number of the owners of real estate in the vicinity of said two acres of land conveyed to said complainant, in trust for said old company, the right to take coal from under their land, upon condition that said old company would sink a shaft to a paying vein of coal, and work

a coal mine there, within two years from the date of such conveyances, and that said shaft was not sunk to a paying vein of coal by or for said old company within the time limited; wherefore said mining rights were not earned, but forfeited, by said old company.

And this defendant charges and shows to your honor that whatever mining rights or rights to mine coal it has in the vicinity of said two acres of land, it received by purchase or donation from the owners of the land directly, and not from its purchase from Main, as in bill stated.

Further answering, this respondent says that it knows nothing, except as informed by said bill of complaint, of a meeting of the board of directors of said old company, in the City of St. Louis, Mo., on the 20th of September, 1877, at which complainant's salary, as president and superintendent of said old company, is said in said amended bill to have been fixed at $150 per month, and a set of by-laws in said bill to have been adopted by said board of directors of said old company, but this respondent charges that all that was done, if there was anything done, at said meeting, was illegal and void, because said meeting was not authorized, nor were its acts ratified, as is required by law, as this defendant is informed and believes.

The defendant, upon information and belief, denies that said complainant acted as president of said old company, and discharged the duties of such president from the 1st day of January, 1878, until the 25th day of January, 1886, or any other time after May 2d, 1878.

This respondent, further answering, says that it knows nothing of its own knowledge of a meeting of

the directors of said old company in East St. Louis, on the . . . day of . . . . . , 1878, but this respondent charges that the action of the board of directors, when the director Isaac Main was not present, by which one-fifth of the capital stock of said old comyany was voted to this complainant, was illegal and fraudulent, and was one of the causes which led to the dissolution of said old company.

And this respondent, further answering, says that the complainant's bill herein, it thinks, set out substantially the facts set up in the bill of Francis H. Edwards *et al. vs.* said old company *et al.*, including the complainant, which bill was filed in the Circuit Court of Marion County, Illinois, in June, 1878, in which bill it was, among other things, charged that said $10,000 had been fraudulently credited to the complainant. It is also true, that no summons was then served upon the complainant, but he and the other non-resident defendants to said bill were served by publication of notice, under the statute of Illinois. It is also true, that a decree *pro confesso* on said bill was taken and entered of record at the August term, 1878, of said Circuit Court, by which decree said old company was dissolved. George W. Herod was appointed receiver, with authority to take and dispose of the property of said old company and pay its debts; that he, as receiver, sold the property to Main for $200, and reported the sale to said Circuit Court at its February term, 1879, and said Circuit Court then approved said report and affirmed said sale, but this respondent denies that said property was, at the time of said sale, worth $20,000, and says that, in its then condition, it was not worth more then it sold for to Main. At the

February term, 1880, of said Circuit Court of Marion County, Illinois, A. McCabe, William H. Ross, John B. Mears and Elizabeth Townsend, some of the defendants in the original bill, who had been served by publication of notice, upon petition under the statute of Illinois, were allowed to come into Circuit Court and answer said bill. They then filed their answer, denying some of the material allegations in the bill; replication to their answer was then filed, and the cause continued for testimony. At the February term, 1881, of said Circuit Court, the cause was heard on bill, answer of said Ozias Townsend *et al.*, replication thereto, records, depositions and testimony taken by a special master in chancery, and, after a full hearing and due consideration of said court, the court ordered and decreed that the original decree, made and entered of record at the August term, 1878, in said cause, stand as confirmed against the said defendants so answering, with costs. This respondent says that this decree of February term, 1881, was never reversed, and is now in full force and effect. It has never been reviewed by any court, and cannot now be reviewed by any court; and it is in the face of that order of said Circuit Court that the complainant herein now comes into this court and claims pay for services, as president and superintendent of said old company, after February, 1881. Further answering, this respondent says that it is true that in May, 1882 (but not in March, 1881, as in bill stated), the said decree of said August term, 1878, was taken to the Supreme Court of the State of Illinois by the said old company alone, not by the complainant herein, by a writ of error, and not by appeal, as in bill stated, and in June, 1882, the said Supreme Court

affirmed so much of said decree of August, 1878, as related to the appointment of the receiver, and reversed the remainder of said decree for the reason of no valid service on said old company, as is fully shown by the opinion of said Supreme Court, in the case of St. Louis & Sandoval Coal & Mining Company *vs.* Francis H. Edwards *et al.*, 103 Ill. 472.

This respondent insists that this order of said Supreme Court does not affect said decree of February, 1881, nor do the reasons for said partial reversal apply to the complainant herein, he having answered said bill before the hearing at February term, 1881, in said Circuit Court, as aforesaid.

This respondent, further answering, says that it is true that, said cause being remanded to said Circuit Court by said Supreme Court of Illinois, said cause was heard by said Circuit Court at its February term, 1883, as in bill stated, and in July, 1883, a decree was rendered by said Circuit Court, finding said bill to be true, and dissolving said old company, approving the appointment of said Herred as receiver, and ordering said receiver to make further report, substantially as in bill stated; but this respondent denies that any appeal was taken from this last-mentioned decree, as stated in complainant's bill. Exceptions were filed to this decree by the attorneys of said old company, which were continued from term to term, until the February term, 1880, when the exceptions were overruled. The said receiver, George W. Herod, then reported in substance the sale made by him to Main, as before reported, and that Main had sold said property to the Sandoval Coal & Mining Company, this respondent, for enough to pay the debts of the old company; that

those debts were paid, and, as far as he knew, said old company had no other property, and there was nothing further for him to do.

It is true, as stated in complainant's bill, that at said February term, 1885, of said Circuit Court, the complainants in the original bill filed a supplemental bill in said cause, making this respondent, the Sandoval Coal & Mining Company, a defendant, to enable it to set up its rights in said property, acquired since the filing of the original bill, and that this respondent then appeared and filed its answer, setting up its rights, and with its answer it filed its cross-bill for affirmative relief, making all the parties to the original suit, including the complainant in this suit, defendants to said cross-bill; that the answer and cross-bill of this respondent, among other things, state and charge, substantially, that in August, 1878, Francis H. Edwards *et al.* presented their bill in chancery in the Circuit Court of Marion County, Illinois, against the said old company, and the complainant in this bill and others, for a dissolution of said old company, for the appointment of a receiver, and other relief, and set out substantially the matters stated in the original bill, and that at said August term, 1878, said Circuit Court entered a decree in favor of said complainants, Edwards *et al.*, as prayed, as in this answer before stated. Said cross-bill also sets up the previous litigation between the parties to said original suit, as hereinbefore stated, and the orders and decrees of the courts, as hereinbefore stated; cross-bill also states that Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Reinhardt, Francis H. Edwards, Henry Wellhoener and Frank Seymour, were the only stockholders in said

old company who ever paid anything on their stock; that the complainant in this bill, Ozias Townsend, Albert E. Ross, and the others who had subscribed, had paid nothing, and refused to pay their assessments, and were in such a pecuniary condition that they could not by law be compelled to pay; that they were not equitable stockholders in said old company, but that the stockholders who had paid their assessments, and were solvent and responsible for the amount of their stock, should be allowed in equity to attend to the disposition of the assets of said old company; that the stock issued by the complainant in this bill to his wife, Elizabeth Townsend, $5,000, to George W. Wharton $4,000, and to T. N. Blackman $1,000, as paid-up stock, was all fraudulently issued, with intent to defraud the said old company out of one-fifth of its capital stock, for which said old company never received anything.

Cross-bill further says that, after the purchase of said property by Main, this respondent, the Sandoval Coal & Mining Company, purchased said property from said Main for $2,465.30, paid to him, which was all said property was then worth for any purpose, and that said Main acted in said sale with the knowledge and consent of all the valid stockholders of said old company; that early in 1879 this respondent took possession of said property, spent some $2,500 in sinking the shaft and making other necessary improvements on said two acres of land, and that while said improvements were being made and said shaft was being sunk the said stockholders and the officers of said old company knew what was being done, and knew that this respondent claimed title to said property, and neither

of them ever objected to said work being done, nor did any of them claim title in said old company to said property until long after said shaft was sunk to a paying vein of coal, and then only by the complainant in this bill, and other pretended and fraudulent stockholders.

Said cross-bill further charges that said complainant, Ozias Townsend, without authority, in August, 1883, used the name of said old company in bringing a suit in ejectment for said property against this respondent; that said old company appealed to Supreme Court of Illinois, at November term, 1883, and in September, 1884, reversed said judgment, and remanded said cause to said Circuit Court for a new trial. Cross-bill asks that the trial of said ejectment suit be stayed until the suit on cross-bill be heard, and then perpetually enjoined. Cross-bill states that said complainant, in the name of said old company, commenced other suits against this respondent and its officers and employés in said Circuit Court, which it asks to be enjoined. Cross-bill further says that said shaft and other improvements are valuable to respondent, because of its rights to mine coal in the vicinity of said shaft, and connected with the underground work on said two acres of land, and that the two acres of land would be of little value to said old company, because it had forfeited its rights by failure to sink its shaft within two years from December, 1877. Said cross-bill prays substantially as stated in bill, and for other and further relief, and that defendants, M. E. Edwards, Lambert Noland, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. Rockwell, answer under oath, and that the complainant and the other defendants answer without oath.

Answers were filed by said old company, the complainant herein, Ozias Townsend, and some of the other defendants, not under oath, denying nearly all the allegations in said cross-bill, to which there was a replication by this respondent.

An answer under oath was filed by the defendant, Charles Reinhardt, and the other defendants who were called upon to answer under oath, stating that the allegations in cross-bill were true, as they are informed and believe, and that they know that it is true that Main purchased said property at the receiver's sale, and sold the same to this respondent to save the solvent stockholders from liability from the debts of said old company, and that such sale was made with the consent of such solvent stockholders; that Main was a director when said old company ceased doing business in March, 1878; that in May, 1878, at a meeting of the board of directors of said old company, the stock of said old company upon which no assessment had been paid was declared forfeited, and Ozias Townsend, the complainant herein, was declared not qualified to hold the office of president because he had no stock, said board of directors then adjourned in a wrangle and confusion and never met again, and the said old company after that never did anything towards completing or prosecuting its enterprise of sinking a coal shaft. This respondent, the Sandoval Coal & Mining Company, soon after its purchase from Main, as in cross-bill stated, took possession of said property, sank the shaft, put buildings and other improvements on said property, as in cross-bill stated, and is now in possession and operating it as a coal mine, and that the officers and stockholders of said old company knew of such occupancy and ex-

penditures, and that said Sandoval Coal & Mining Company claimed title to said property, but never objected to such occupancy or improvements until long after the same were made, to-wit: in 1883, and even then title to said property in said old company was claimed only by some pretended and fraudulent stockholders, who never paid anything to said old company for their supposed stock, and who use the name of said old company without authority in suits, as in cross-bill stated; that complainant in cross-bill (this respondent) paid for said property all that it was worth, and more than it was worth, for any purpose, other than sinking and operating a coal shaft and mine, and that said old company was in such a financial, disorganized and confused condition that it could not have completed its enterprise; that the said two acres of land, with the improvements put thereon by complainant in cross-bill, would be of little value to said old company, as it had forfeited and lost its supposed mining rights and royalty by failure to sink a shaft, etc., within the time limited by the deeds conveying the same, but that said two acres of land are of great value to the complainant in cross-bill, not only because of what they have actually cost it, but because of the property, buildings, coal, and right to mine coal, which it has in the immediate vicinity of said coal shaft, the value of which would be lost if it had not the use of the shaft to operate the same, etc.; and this respondent admits that a trial was had at said August term, 1885, of said Circuit Court of Marion County, Illinois, but says that the findings and decree of said Circuit Court were not as stated in said amended bill of complaint, but they were as follows, to-wit:

August 25th, 1885, being the third Tuesday of the August term of this court, the court having duly considered the evidence introduced in this cause, as well as the arguments of the solicitors, and being now fully advised, does find that the material allegations in the cross-bill herein are true, and that the allegations in the sworn answer of Chas. Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland and Mrs. L. N. Rockwell, to said cross-bill are also true; that the following named defendants in said cross-bill, to-wit: Isaac Main, L. Noland, Jacob Lichty, C. N. Rockwell, deceased, now represented by his administratrix, Mrs. C. N. Rockwell, Chas. Reinhardt, Francis H. Edwards, now represented by his executrix, Mrs. M. E. Edwards; Henry Wellhoener, and Frank Seymour, are the only stockholders in the St. Louis & Sandoval Coal & Mining Company who paid anything on their said stock, and that they are the only parties or stockholders who have any interest in or right to determine how the assests, if any, of said company, which has been dissolved by the decree of this court, shall be disposed of, to whom, and for what consideration; that the other defendants in said cross-bill, to-wit: Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thos. B. Hill, Jas. Sheals, Jas. Collins, Jno. B. Mears, Wm. H. Ross, True N. Blackman and Geo. W. Wharton, never paid anything for their supposed stock in said St. Louis & Sandoval Coal & Mining Company, and if any such stock was issued to them, or either of them, it was wrongfully and fraudulently done, and neither of them had any interest in the assets of said company, nor any right to interfere

with the disposition of such assets, and that they, or some of them, have fraudulently confederated and wrongfully used the name of said St. Louis & Sandoval Coal & Mining Company in the prosecution of suits for the possession and injuries to what was once the property of said company, in total disregard of the wishes and interests of the valid stockholders of said company, and that they should be enjoined from using said name of said company, and from prosecuting any such suits; that at the instance and upon the motion of the said valid stockholders in said St. Louis & Sandoval Coal & Mining Company, to-wit: Francis H. Edwards, Lambert Noland, Henry Wellhoener, Frank Seymour, Chas. Reinhardt, Isaac Main, Jacob Lichty, and C. N. Rockwell, one George W. Herod was by this court appointed to receive the property of said company under the direction and with the advise and consent of said valid stockholders. He, the said Geo. W. Herod, on the 28th day of September, 1878, sold and conveyed to one Isaac Main all the property of said company, to-wit: the south half of four acres of land north of the right of way of the O. & M. R. R., and adjoining Primmer's addition to the village of Sandoval, and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through the said four acres from said Primmer's addition eastward, in the west-half of the northeast quarter of section seventeen, T. 2, N. R. 1 east, in Marion county, Illinois, it being the same land in bill and cross-bill described, and also the buildings, mining fixtures, and all rights to mine coal in certain lots and lands described in bill and cross-bill.

That the said Isaac Main bought said property in cross-bill described at the instance and request of all the valid stockholders of said St. Louis & Sandoval Coal & Mining Company, for the purpose, if possible, of selling the same for enough to pay off the indebtedness of said company, which then amounted to over two thousand dollars, so as to save said valid stockholders from further liability for such debts, and that said Main afterwards, at their instance and request, sold and conveyed all the said property in consideration of the sum of $2,465.30, paid by the complainant in said cross-bill to said complainant, the Sandoval Coal & Mining Company, which said sum of $2,465.30 was all said property was then worth, and more than it was worth for any other purpose, other than mining purposes, after an outlay of a large sum of money to make it valuable for that purpose; that the Sandoval Coal & Mining Company, the complainant in said cross-bill, soon after its purchase of said property from said Main, to-wit: in the spring of 1879, took possession of said land and property, and with the consent and under the advice of all of said valid stockholders of said St. Louis & Sandoval Coal & Mining Company, sunk a coal shaft, erected buildings and machinery thereon, and expended in sinking said shaft and erecting such buildings and other permanent fixtures and machinery over the sum of twenty-five thousand dollars; all of which was done with the knowledge, consent, direction and acquiescence of said valid stockholders, and no objections to such improvements were made or any title claimed to said property, by even the insolvent or fraudulent or pretended stockholders, until long after said expenditures had been made, and that such ex-

penditures were made in good faith, under the belief that the title to said property was perfect in said complainant in cross-bill; that the complainant in cross-bill owns other lands, buildings and improvements, and mining rights in the immediate vicinity of and connected with the lands, etc., in controversy in this suit, both by buildings and machinery on the surface, and by works and passages under ground, which would be comparatively valueless to complainant in cross-bill, if its title to said two acres of land were not perfected. It is, therefore, ordered, adjudged and decreed by the court:

1st.—That the defendants in cross-bill, Andrew Roll, Johnson A. Power, Albert A. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thos. B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman and Geo. N. Wharton, are not equitable or valid stockholders in said St. Louis & Sandoval Coal & Mining Company, and that they have no interest in the assets of said company, and have no right to interfere with the application of any such assets, nor to sue for the same.

2d.—That Margaret E. Edwards, as executrix of Francis H. Edwards, deceased, and Lambert Noland, Henry Wellhoener, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. C. N. Rockwell, as the administratrix of the estate of C. N. Rockwell, deceased, are the only equitable and valid stockholders in said St. Louis & Sandoval Coal & Mining Company, and have full right and power to dispose of all the property of said company which has been dissolved by the decree of this court in original bill in this cause at a former term of this court.

3d.—That the said equitable and valid stockholders, to-wit: Margaret E. Edwards, as executrix of Francis H. Edwards, deceased, Lambert Noland, Henry Wellhoener, Frank Seymour, Chas. Reinhardt, Isaac Main, Jacob Lichty and Mrs. L. N. Rockwell, as administratrix of the estate of C. N. Rockwell, deceased, be, and they are hereby ordered to execute and deliver to the complainant in cross-bill, the Sandoval Coal & Mining Company, a valid deed of conveyance, in the name of the St. Louis & Sandoval Coal & Mining Company, for the said property, to-wit: the south half of four acres of land on the north of the right-of-way of the Ohio & Mississippi R. R. and adjoining Primmer's addition to the town (now village) of Sandoval, and running north as far as Scott street in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through said four acres, from said Primmer's addition, eastward, in the west half of the northeast quarter of section seventeen (17), T. 2 N., R. 1 east, in Marion county, Illinois; also for the mining rights and royalty in and to certain lands and lots conveyed by sundry persons to Ozias Townsend, and described in deeds recorded in Record Book D D, commencing on pages 74 and 90, of deed records of said Marion county, and conveyed by said Ozias Townsend to said St. Louis & Sandoval Coal & Mining Company, and by Geo. W. Herod, as receiver, to said Isaac Main, all in Marion county, Illinois, by the fifteenth day of September, 1885, and in default of such deed being made and delivered as aforesaid, by the day aforesaid, that the master in chancery of this court execute such deed of conveyance, and deliver the same to said Sandoval Coal & Mining Company.

4th.—That the said St. Louis & Sandoval Coal & Mining Company, agents and attorney, and all other persons in its name or behalf, be, and the same are hereby, perpetually restrained from prosecuting any and all suits against the Sandoval Coal & Mining Company, either in ejectment for said property or trespass to said property, and that the ejectment suit No. 45, of this term of this court, and the suit for trespass No. 54, of this term, be, and they are hereby, restrained, and their prosecution perpetually enjoined, and said suits dismissed at cost of plaintiff.

It is further ordered by the court that all costs that have accrued herein, both those supplemental bills and cross-bills, be taxed against the defendahts in the original bill, and that execution may issue for the same in the name of the complainants in the original bill.

Appeal prayed by defendants in cross-bill. Appeal allowed upon said defendants in cross-bill filing within sixty days from this date, August 25th, 1885, certificate of evidence and an appeal bond in proper form, in the sum of one thousand dollars, with good and sufficient security, to be approved by clerk of this court.

The above and foregoing decree was filed August 26th, 1885. J. B. LEWIS, *Clerk*.

The above decree approved by

WM. H. SNYDER, *Judge*.

This respondent admits that this decree was reviewed by the Supreme Court of Illinois, and affirmed, as in bill stated, and as reported in the case of the St. Louis & Sandoval Coal & Mining Company *et al. vs.* the Sandoval Coal & Mining Company, 116 Ill. 170; and this respondent avers that by virtue of said decree,

the master in chancery of said Marion county, Illinois, made, executed and delivered to this respondent, a good and valid deed of said property, under which deed this respondent holds said property, as an absolute and indefinite estate, and not in trust as in amended bill; and this respondent further says the mining rights, or rights to mine, and remove coal, which it has and uses, it secured by purchase and donation from the parties who owned them, and the lands under which such coal is, and not by said conveyance from Main, as in bill stated, for the reason that the title in said old company and in Main, had been lost and forfeited, by reason of failure to sink the shaft within the time limited in the conveyance.

And this respondent, further answering, denies that this respondent 'took said property from Isaac Main, with full knowledge and notice of the debts and claims' of said complainant against said old company, as stated in the amended bill; but, on the contrary, this respondent says that it then knew nothing of such debts or claims, and it believes there were none, and it insists that so far as this respondent and the complainant are concerned, all business matters existing between them, were fully and finally settled in the said decree of August, 1885, and that the 'so-called' pretenses for not paying complainant, as charged in amended bill, are true.

And this respondent, further answering, denies that the complainant is entitled to the relief or any part thereof, in the said bill of complaint demanded, and prays the same advantage of this answer, as in case of a demurrer to said bill; and having fully answered all that is material for it to answer, this respondent prays

to be dismissed with its costs and charges herein unjustly caused by the complainant."

IV.

The Joint and Several Answer of Charles Reinhardt, Isaac Main, Lambert Noland, Margaret E. Edwards, Lucinda N. Rockwell, Jacob Lichty and Frank Seymour.

The answer is as follows (pp. 46 to 55):

"It is true that the complainant, Ozias Townsend, came to Sandoval, Illinois, in A. D. 1877, and attempted to organize a company under the name of the St. Louis & Sandoval Coal & Mining Company, and that these respondents subscribed stock, substantially as stated in bill; but these respondents say that the said complainant, Ozias Townsend, then and there represented himself as wealthy, and that he had ample means to buy the necessary land and sink a shaft to a paying vein of coal, and that he would furnish the money to do so, and that he would take all the stock which was not taken and subscribed by the residents of said town of Sandoval, and that the complainant then and there did subscribe such stock to the amount of, to-wit, $39,300 (not in trust for said St. Louis & Sandoval Coal & Mining Company, hereafter for convenience called 'old company'), as stated in bill, but for himself, as these respondents were then and there by him assured.

Further answering, these respondents deny that the said complainant spent all his time or any time from the 1st of July, 1877, to January 1st, 1878, in taking

or securing mining rights for said old company, or in steps to get said company organized; they deny that he took or secured 436 or any number of such rights, as in bill stated. These respondents deny that the complainant laid out or expended of his own money the sum of $2,700 or any other sum in securing mining rights or otherwise for said old company, as in bill stated, and they further deny that they or the said old company agreed to pay complainant a fair or reasonable compensation for his time, as in bill stated.

These respondents, further answering, say that it is not true that the complainant paid to Samuel Ewing the sum of $200, or any other sum for said two acres of land or any land, as in said bill stated; but these respondents state the truth to be that the defendant, the Sandoval Coal & Mining Company, per the defendant Isaac Main, paid said Ewing for said land, and they deny that the complainant paid said Samuel Ewing for said land, as repeatedly stated in said bill.

Further answering, these respondents, except Main, say that they know nothing, except from hearsay, of a meeting of the directors of said old company in the City of St. Louis, Missouri, nor do they know anything of the fixing of the salary of complainant, or of an agreement to pay his traveling expenses, as in bill stated; neither do these respondents know what, if any, by-laws were adopted by that meeting; but these respondents say upon information and belief, that if there was any such meeting and action, as in bill stated, it was unauthorized and void, and the respondent Main says that it is true there was such a meeting in St. Louis, Missouri, on the 20th of December, 1877, at which the salary of the president of said old company

was attempted to be fixed at $150 per month for the first term, commencing January 1st, 1877, and that certain by-laws were then and there adopted, but he has no copy of such by-laws, and does not know whether or not there were any such, as stated in bill; but he does remember that by-laws, article 4, section 6, was in these words: 'If any stockholder shall fail to pay assessments when calls are made, he shall pay a fine of ten per cent. to be added to the amount unpaid and charged against him. Should the next assessment not be made, then again ten per cent. shall be added to the amount due, and so on, till the arrears of said stockholders equal the amount which he has paid in, and in such case the share or shares of stock may be declared forfeited.'

And the respondent Main further says, that afterwards, at a meeting of the directors of said old company, at which T. W. Blackman, J. B. Mears, H. Wellhoener, and the complainant, Ozias Townsend, were present, on the 29th day of April, 1878, after an assessment of five per cent. had been made upon all the stock issued by said company, 'Mr. Blackman moved that all stock be declared forfeited on which the assessments have not been paid, except that held by Dr. Ross, Mr. McCabe, and Captain Hill; carried, Blackman, Mears and Wellhoener voting in the affirmative.'

And the respondent Main, further answering for himself, says that he has not a copy of the by-laws of said old company, but that article 1, section 2, of said by-laws, in substance provided that no person who was not a stockholder in said company could hold any office, president or director, in said company.

And these respondents, further answering, say that at a meeting of the board of directors of said old company, held at a hotel in the City of East St. Louis, in the State of Illinois, the following, among other proceedings, were had, to-wit:

'Board was called to order by the secretary in the absence of a presiding officer. On motion of Mr. Main, Mr. Mears was nominated as president *pro tem.* of this board, which motion was seconded by Mr. Blackman; carried, Messrs. Blackman, Main, Wellhoener voting in the affirmative, Mr. Mears not voting. Mr. Blackman inquired of the secretary if the books of this company showed that Ozias Townsend is a stockholder in this company. The secretary stated that the books showed that Ozias Townsend is not a stockholder; that all stock held by him has either been sold, forfeited, or transferred by him, and that he is not a stockholder in this company at the present time, and that there is a vacancy in the board occasioned by the disqualification of said Ozias Townsend.

Mr. Main introduced the following preamble and resolution:

Whereas Ozias Townsend, late president and superintendent of this company, has together forfeited for non-payment of assessment, and sold and assigned all stock owned, subscribed for, and held by him in this company; and

Whereas, under article 1, section 2d, of the by-laws of this company, he is no longer eligible to hold office in said company.

Therefore, be it resolved, that the office of president and superintendent be, and is hereby, declared vacant.

And, be it further resolved, that we, the remaining directors of said company, do proceed to elect a president *pro tem* to preside at this meeting, *vice* Ozias Townsend, disqualified as aforesaid. Mr. Mears moved that the above resolutions be adopted, which motion was seconded by Mr. Main; carried, Messrs. Main, Mears, Blackman, and Wellhoener voting in the affirmative.'

And these respondents charge and show to your honor that that meeting of said directors of said old company, on the 2d day of May, 1878, was the last meeting ever held by them, and that after that date said old company did absolutely nothing in the way of completing its said enterprise; and these respondents charge and say that if the complainant, after that date (May 2d, 1878), did anything for said old company, or in the name of said old company, as president or otherwise, it was done without authority and against the will and interest of these respondents; and these respondents state the truth to be that the said complainant actually but fraudulently issued so-called paid-up stock of said old company to the aggregate amount of $10,000, to-wit: to his wife, Elizabeth Townsend, $5,000; to George W. Wharton, $4,000, and to T. N. Blackman, $1,000, for which the said old company never received anything; and upon information and belief, these respondents charge the truth to be that the said complainant has sold, hypothecated and transferred, without right or authority, to divers persons, whose names are not known to these respondents, a large amount of the stock for which he subscribed in said old company, for which he received large amounts of money to his own use, of which and

for which stock he never paid anything to said old company.

These respondents, further answering, distinctly and emphatically deny that the said old company or these respondents owe to said complainant anything, and they deny that the said complainant is legally or equitably entitled to anything from said old company, or any of the defendants herein, or in this suit, either for services, money paid out or anything else, as charged in said bill or otherwise, notwithstanding his many repetitions of such claims in his bill of complaint.

And these respondents further say that all the property of said old company was, as stated in bill, put into the hands of George W. Herod, as receiver, and that he acted as such receiver from thence, August, 1878, to 1885, and yet the complainant never presented his said pretended claim, or any claim to said receiver; and respondents further aver that the said old company was dissolved by order of court, as in bill stated, in August, 1883, so that under the laws of the State of Illinois no claim can be presented against said old company after August, 1885.

And these respondents, further answering, show and aver that if the complainant ever had any cause of suit or any just claim against the defendants in this, his bill of complaint, for or concerning any of the matters, transactions or dealings in his said bill of complaint mentioned (which these respondents do not admit, but deny), the same did accrue or arise more than five years before the said bill of complaint was exhibited to this honorable court; and these respondents say and aver that they did not at any time within five years before the filing of the complainant's bill herein, ever

promise or agree to come to any amount for or to pay or in any way satisfy the complainant any money for or concerning any of the matters, transactions or claims in the complainant's said bill of complaint charged or alleged; wherefore these respondents charge that by the statute of limitation of the State of Illinois, upon which respondents rely, and here set up and plead, the said complainant is barred from having and maintaining his said bill of complaint against these respondents. These respondents, further answering, say that it is true that these respondents *et al.*, filed their bill in chancery in the Circuit Court of Marion County, Illinois, in 1878, as in bill stated, and that a trial was heard and decree rendered at August term, 1878, dissolving said old company and appointing Geo. W. Herod, receiver, as in bill stated; but these respondents deny that said decree was entirely rendered, as in bill stated, but they show that order appointing said receiver, was affirmed by said Supreme Court, and the remainder reversed, as is fully shown by the opinion of said court in the case of the St. Louis & Sandoval Coal & Mining Company *vs.* Edwards *et al.*, 103 Ill. 472. These respondents admit that trials were had in said Circuit Court of Marion County, on said original bill, supplemental bill, and cross-bill, as in bill stated, and they show to the court here that in said Circuit Court of Marion County, Illinois, at said several terms order, finding, and decrees were rendered and entered of record as follows, to-wit:

'And now, this day, February 14th, 1881, leave is given to open depositions; and now again, on the 22d day of February, 1881, come the complainants, by their solicitors; also come the defendants, Ozias Town-

send, Mary A. McCabe, William H. Ross, John B. Mears and Elizabeth Townsend, by their solicitors, M. Millard and Young; and this cause being ready for trial, come on to be heard as against these defendants on bill, answer of said defendants, replication thereto, exhibits, records, depositions and oral proofs taken by E. L. Stoker, special master appointed by the court to take down same; and the court, being fully advised therein, doth order, adjudge and decree that the original decree, made at the August term, A. D. 1887, of this court, in this cause, stand affirmed as against said defendants so answering, with costs.'

'And now, on this day, to-wit: Monday, February 12th, A. D. 1883, come the complainants, by Schaeffer & Goodnow, their solicitors, and also the defendants, by Millard & Young, their solicitors, and, this cause being ready for trial, come on for trial and was heard by the court upon the bill, answers of defendants, the St. Louis & Sandoval Coal & Mining Company, Ozias Townsend, Elizabeth Townsend, Mary A. McCabe, William H. Ross, and John B. Mears, replications thereto, the default of the defendants, Andrew Roll, Johnson A. Power, Albert E. Ross, Thomas B. Hill, James Sheals, James Collins, True N. Blackman, and George W. Wharton, records, exhibits, depositions and oral evidence, and letters, books thereon, taken by E. L. Stoker, special master, and read on the hearing of this cause at February term, A. D. 1881, as per stipulation on file herein, and the court, having heard the evidence, takes this cause under advisement to be argued by counsel in vacation; and afterwards, to-wit: July 14th, A. D. 1883, at chambers the court hears the arguments of counsel, and, being fully ad-

vised herein, doth find that the allegations in the bill are sustained by the evidence and that the court has jurisdiction of the parties herein, and the subject-matter; that the St. Louis & Sandoval Coal & Mining Company, about the tenth day of March, A. D., 1878, ceased to prosecute the work for which it was organized, leaving debts unpaid to complainant, Frank Seymour and others, to the amount of two thousand one hundred dollars; that the business of said St. Louis & Sandoval Coal & Mining Company was mismanaged by its officers; that said company is insolvent, and that it would be useless for said company to resume business on account of financial embarrassments. It is therefore ordered, adjudged and decreed by the court, that the defendant, the St. Louis & Sandoval Coal & Mining Company be, and the same is, hereby dissolved, and for nothing esteemed in law, and the appointment of George W. Herod as receiver of said defendant, the St. Louis & Sandoval Coal & Mining Company, by the court at the August term, A. D., 1878, of this court be, and the same is, hereby approved and confirmed, and he is ordered to make further report of his actings and doings herein, as such receiver.

At February term, A. D. 1885, of said Circuit Court of said Marion County, Illinois, said receiver reported, in substance, his sale of said property to Isaac Main; that, since the company had no other property, Main sold said property to the Sandoval Coal & Mining Company; that the debts of said St. Louis & Sandoval Coal & Mining Company were all paid and discharged, and there was nothing further for him to do.

The original complainants then filed supplemental bill, making the Sandoval Coal & Mining Company defendants.

The Sandoval Coal & Mining Company then answered said bill and supplemental bill, and with its answer filed its cross-bill for affirmative relief, making all the parties in the original suit defendants to the cross-bill.

August 10th, 1885, being the first day of the August term of this court, this cause came on for trial. Solicitors Green & Gilbert, H. C. Goodnow, and M. Shaeffer appeared for complainant in original bill and cross-bill, and U. M. Young and G. A. Koerner appeared for the defendants, the St. Louis & Sandoval Coal & Mining Company, J. B. Mears, Ozias Townsend, Elizabeth Townsend, Wm. H. Ross, and Henry Wellhoener; also appeared by answer to cross-bill the defendants, Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland and Mrs. L. N. Rockwell. The other defendants in the cross-bill came not, but made default, and the cross-bill is taken as confessed by such defendants who have not answered. This cause comes on to be heard on original and supplemental bills and answers and replication, and on cross-bill, and the answer and replication to the answers of the St. Louis & Sandoval Coal & Mining Company, J. B. Mears, O. Townsend, E. Townsend, W. H. Ross and Henry Wellhoener, the answer of Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland and Mrs. L. N. Rockwell being taken as confessed by the complainants in this cross-bill, and all the evidence taken by depositions, and the evidence taken

before J. E. Bryan, master in chancery, as well as the evidence on a former trial on the original bill, taken down by E. L. Stoker, and sundry deeds and records of this court, and the court having heard the same, and having heard the arguments of the solicitors of the several parties, takes this cause under advisement.

August 25th, 1885, being the third Tuesday of the August term of this court, the court, having duly considered the evidence introduced in this cause, as well as the arguments of the solicitors, and being now fully advised, does find that the material allegations in the cross-bill herein are true, and that the allegations in the sworn answer of Charles Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland, and Mrs. L. N. Rockwell to said cross-bill are also true; that the following named defendants in said cross-bill, to-wit: Isaac Main, L. Noland, Jacob Lichty, C. N. Rockwell, deceased, now represented by his administratrix, Mrs. L. N. Rockwell; Charles Reinhardt, Francis H. Edwards, deceased, now represented by Mrs. Margaret E. Edwards, executrix; Henry Wellhoener and Frank Seymour, are the only stockholders in the St. Louis & Sandoval Coal & Mining Company who paid anything on the said stock, and that they are the only parties or stockholders who have any interest in or rights to determine how the assets, if any, of said company, which has been dissolved by the decree of this court, shall be disposed of, to whom, and for what consideration.

That the other defendants in said cross-bill, to-wit: Andrew Roll, Johnson A. Power, Albert E. Ross, Jerry A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins,

John B. Mears, William H. Ross, True N. Blackman, and George M. Wharton, never paid anything for their supposed stock in said St. Louis & Sandoval Coal & Mining Company, and if any such stock was issued to them, or either of them, it was wrongfully and fraudulently done, and neither of them had any interest in the assets of said company nor any rights to interfere with the disposition of such assets, and that they, or some of them, have fraudulently confederated and wrongfully used the name of said St. Louis & Sandoval Coal & Mining Company in the prosecution of suits for the possession of and injuries to what was once the property of said company, in total disregard of the wishes of the valid stockholders of said company, and that they should be enjoined from using said name of said company and from prosecuting any such suits.

That at the instance and upon the motion of the said valid stockholders in said St. Louis & Sandoval Coal & Mining Company, to-wit: Francis H. Edwards, Lambert Noland, Henry Wellhoener, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and C. N. Rockwell, one George W. Herod was by this court appointed to receive the property of said company. Under the direction and with the advise and consent of said valid stockholders, he, the said George W. Herod, on the 28th of September, 1878, sold and conveyed to one Isaac Main all the property of said company, to-wit: the south half of four acres of land north of the right-of-way of the O. & M. Railway and adjoining Primmer's addition to the village of Sandoval and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the excep-

tion of the streets to be continued to the said four acres from said Primmer's addition eastward, in the west half of the northeast quarter of section 17, T. 2 north, R.—east, in Marion county, Illinois, it being the same land in bill and cross-bill described, and also the buildings, mining fixtures, and all rights to mine coal in certain lots and lands described in bill and cross-bill.

That said Isaac Main bought said property in cross-bill described at the instance and request of all the valid stockholders of the St. Louis & Sandoval Coal & Mining Company, for the purpose, if possible, of selling the same for enough to pay off the indebtedness of said company, which amounted to over $2,000, so as to save said valid stockholders from further liabilities from said debts, and that said Main afterwards, at their instance and request, sold and conveyed all the said property in consideration of the sum of $2,465.30, paid by the complainant in said cross-bill, and said complainant, the Sandoval Coal & Mining Company; which said sum of $2,465.30 was all said property was then worth, and more than it was worth, for any purpose, other than mining purposes, after an outlay of a large sum of money to make it valuable for that purpose.

That the Sandoval Coal & Mining Company, the complainant in said cross-bill, soon after its purchase of said property from said Main, to-wit: in the spring of 1879, took possession of said land and property, and with the consent and under the advice of all of said valid stockholders of said St. Louis & Sandoval Coal & Mining Company sunk a coal shaft, erected buildings and improvements thereon, and expended in sinking said shaft and erecting such buildings and other permanent fixtures and machinery over the sum of $25,000, all of

which was done with the knowledge, consent, direction and acquiescence of said valid stockholders, and no objection to such improvements was made or any title claimed to said property by even the insolvent or fraudulent or pretended stockholders until long after said expenditures had been made, and that such expenditures were made in good faith under the belief that the title to said property was perfect in said complainant in cross-bill.

That the complainant in cross-bill owns other lands, buildings, and improvements and mining rights in the immediate vicinity of and connected with the lands, etc., in controversy in this suit, both by buildings and machinery on the surface and by works and passages underground, which would be comparatively valueless to complainant in cross-bill if its title to said two acres of land were not perfected.

It is therefore ordered, adjudged and decreed by the court:

1st.—That the defendants in the cross-bill, Andrew Roll, Johnston A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman and George N. Wharton, are not equitable or valid stockholders in said St. Louis & Sandoval Coal & Mining Company, and that they have no interest in the assets of said company, and have no right to interfere with the application of any such assets, nor to sue for the same.

2d.—That the defendants in the cross-bill, Margaret E. Edwards, as executrix of Francis A. Edwards, deceased, and Lambert Noland, Henry Wellhoener,

Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. L. N. Rockwell, as the executrix of the estate of C. N. Rockwell, deceased, are the only equitable and valid stockholders in said St. Louis & Sandoval Coal & Mining Company, and have full right and power to dispose of all the property of said company, which has been dissolved by the decree of this court in original bill in this cause at a former term of this court.

3d.—That the said equitable and valid stockholders, to-wit: Margaret E. Edwards, as executrix of Francis H. Edwards, deceased; Lambert Noland, Henry Wellhoener, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. L. N. Rockwell, as administratrix of the estate of C. N. Rockwell, deceased, be, and they are hereby, ordered to execute and deliver to the complainants in the cross-bill, the Sandoval Coal & Mining Company, a valid deed of conveyance, in the name of the St. Louis & Sandoval Coal & Mining Company, for the said property, to-wit: the south half of four acres of land on the north of the right-of-way of the Ohio & Mississippi Railway, and adjoining Primmer's addition to the town (now village) of Sandoval, and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through said four acres, from said Primmer's addition eastward, in the west half of the northeast quarter of section seventeen (17), T. 2 N., R. 1 east, in Marion county, Illinois; also for the mining rights and royalty in and to certain lands and lots conveyed by sundry persons to Ozias Townsend, and described in deeds recorded in Record Book D D, com-

mencing on pages 74 and 90 of deed records of said Marion county, and conveyed by said Ozias Townsend to the said St. Louis & Sandoval Coal & Mining Company, and by George W. Herod, as receiver, to said Isaac Main, all in Marion county, Illinois, by the 15th day of September, A. D. 1885, and in default of such deed being made and delivered as aforesaid, by the day aforesaid, that the master in chancery of this court execute such deed of conveyance, and deliver the same to said Sandoval Coal & Mining Company.

4th.—That the said St. Louis & Sandoval Coal & Mining Company, its agents and attorneys, and all other persons in its name or behalf, be, and the same are hereby, perpetually restrained and enjoined from prosecuting any and all suits against the Sandoval Coal & Mining Company, either in ejectment for said property or trespass to said property, and that the ejectment suit, No. forty-five, of this term of this court, and the suits for trespass, No. fifty-four, of this term, be, and they are hereby, restrained, and their prosecution perpetually enjoined, and said suits are dismissed at the costs of the plaintiff.

It is further ordered by the court that all the costs that have accrued herein, both those of supplemental bills and cross-bill, be taxed against the defendants in the original bill, and that execution may issue for the same in the name of the complainants in the original bill.

Appeal prayed by the defendants in the cross-bill. Appeal allowed upon said defendants in cross-bill, filing within sixty days from this date, August 25th, 1885, certificate of evidence, and an appeal bond, in proper form, in the sum of one thousand dollars, with

good and sufficient security, to be approved by the clerk of this court.

Approved by

WILLIAM H. SNYDER,
Judge."

"And these respondents rely upon these decrees and orders of the said Circuit Court of Marion County, Illinois, which are still in full force and unreversed, but in all things affirmed by the Supreme Court of Illinois, as appears from its order and opinion in the case of St. Louis & Sandoval Coal & Mining Company *et al. vs.* Sandoval Coal & Mining Company, 116 Ill. 170, as a bar to the further prosecution of this suit, and as a complete defense to the complainant's amended bill of complaint; and these respondents insist that the so-called pretenses for not paying the complainant, as alleged in bill, are true, and these respondents deny that the respondents owe the complainant anything for services or money advanced or paid, or otherwise, as stated in bill, and they deny that said old company is indebted to complainant, as stated in his bill, and they further deny that the complainant is entitled to the relief, or any part thereof, asked for in his bill of complaint.

And, having fully answered all that they are advised it is material for them to answer, they pray to be dismissed with their costs."

V.

REPLICATION.

To each of the two foregoing answers complainant filed a general replication (pp. 55, 56).

VI.

THE EVIDENCE.

JNO. B. MEARS, one of the directors of the old company (p. 57), swears, among other things, that said Ozias Townsend (p. 59) was chosen president by the board of directors, and his salary fixed, in the month of January, 1878, at $150 per month; that said Townsend entered upon the duties of president and *ex officio* superintendent, and performed them from that time until the dissolution of the corporation. He devoted his whole time to the business of the company, and worked faithfully for its interests. He conceived the idea of getting up the corporation, and carried the idea into execution, commencing its organization in 1877 (p. 60). It was through his influence that the witness became a stockholder (p. 61). My opinion is that all the expenditure in connection with the enterprise was Townsend's. I saw the Illinois geological survey in reference to coal—that report was the basis of my belief in regard to the existence of coal at Sandoval, which is six miles from Centralia, Ills., a place named in that report (p. 62). Mears was present at the meeting of the board of directors, held at East St. Louis Hotel, in East St. Louis, Illinois, in February, 1878. The directors present were Townsend, Wellhoener, T. W. Blackburn (who succeeded Sheals, resigned) and Mears. The meeting was called under section 1 of article 2 of the by-laws (p. 63). The meeting was called to ascertain our "bearings." We were incurring a large liability to Townsend without the then ability to liquidate it. We passed the resolutions allowing Townsend, in full satisfaction for his services and ex-

penditures up to January 1st, 1878, ten thousand dollars, the sum to be receipted for in full compensation for said services, and if he should wish that amount to be endorsed upon the stock held by him as a member of the company, and so much paid on account of calls made and to be made on such of the stock as may be held or indicated by him, and such endorsement by the secretary and treasurer of this company shall be held and accounted for as a receipt in full for calls on said stock, to the amount of ten thousand dollars. We also passed a resolution authorizing and directing the secretary and treasurer to endorse upon the said stock held by Townsend, as he should indicate, payments of calls on the same to the extent aforesaid, and in the event of such endorsement failing (p. 64), then he should have a valid claim against the company to that extent for such services hereby acknowledged to be rendered. (See resolutions, pages 63 and 64.) We thought it was just compensation to Townsend. He did not participate in the passing of the resolution. Townsend was in St. Louis, Mo. He purchased the two acres of ground upon which the shaft was sunk at Sandoval (p. 65). Ewing, the grantor, told me that Townsend negotiated the purchase. A contract was made with Frank Seymour to sink a shaft upon this land. He sunk the shaft to considerable depth, probably 170 feet. Townsend subscribed for a large number of shares of stock, and the understanding was that he was to sell out that stock and pay the money into the treasury of the company. He made an effort to sell stock to Geo. Wharton and to Manning; that was in May, 1878; Townsend had been negotiating with Manning and Wharton for some time previous to that date (p. 66).

They were to take a large amount, sufficient to set everything in active operation and pay for all the necessary appliances for mining and elevating coal. Geo. Wharton was a man of means, and Manning was reputed to be a man of means. It was represented by Main and a friend of his at Sandoval that Wharton would not put up any money into the stock of the concern while Townsend had the management, that it was necessary to get rid of Townsend; on that presumption they called a meeting in East St. Louis and opposed Townsend. The negotiations between Townsend, Wharton and Manning failed on account of the legal steps taken by Main to dissolve the corporation (p. 67). That is what prevented it. I refer to suit of Main and others against the old company. (See 103 Ills. Reports, p. 472.) Geo. Wharton told me that he had made up his mind to take the amount of stock (that is ten thousand dollars) and pay cash for it, that he had the money in bank. This purchase of Wharton, with the contemplated purchase of Manning that hinged upon Wharton's subscription, would have been ample for all purposes. Townsend, as president, acted intelligently and earnestly all the time. He took a deep interest in the business of the company. On the day of the proposed meeting in May, Main, Blackman and Dr. Edwards in conversation led me to believe that Wharton and Manning were to take sufficient stock in the company, and pay cash for it, to put the work on a paying footing (p. 68), provided Townsend was put out of the position. Townsend, as president, had called a meeting, in the City of St. Louis, for May 2d, 1878. There was not a quorum of directors there. The suit by Main and others to dissolve the corporation was

commenced in the Circuit Court of Marion County, Illinois, June 27th, 1878. At that time the shaft had been sunk 114 feet. The prospect of reaching a successful vein of coal was good. It was almost a certainty, and the demand for coal was good. The shaft had been sunk at a place where a ready market could be had. I think the cash value of our franchise was worth seventy-five thousand, including the mining rights secured by Townsend (p. 69). He had secured, I think, about 436 rights. The mining rights were valuable, and were convenient to the shaft. If Townsend had not been interfered with by the suit, he would have succeeded in carrying the enterprise through successfully. At the meeting, May 2d, 1878, Main was very bitter against Townsend (p. 70). The meeting to oust Townsend was not called under the by-laws. Under the by-laws, no meeting could be held, as a regular meeting, unless it was called by the president or by the written request of three directors. This meeting was not called in the manner prescribed by the by-laws. Main's whole object seems to have been to remove Townsend (p. 71). In the suit referred to, I was examined with regard to Townsend's salary, but I think nothing was said in regard to his expenses. I said his salary had not been paid. At the meeting referred to, I did not look upon the allowance of ten thousand as the main feature; they seemed to dwell more particularly upon the ousting of Townsend and wrecking the company (p. 72). When Townsend's salary was fixed, all the directors were present except Sheals. The meeting, May 2d, 1878, at East St. Louis, Illinois, was attended by Main, Blackman, Wellhoener and myself (Mears). The meeting broke up unsatisfactorily. Wharton was

present. His certified check for stock had not, to my knowledge, been before that meeting delivered (p. 73). Townsend's original subscription was ten shares (p. 74). When property went into hands of receiver, it was worth $75,000; the coal was of good quality, six feet thick, and well located. Shaft had to be sunk within two years from date when mining rights were secured (p. 75). When contract with Seymour to sink shaft was made, the length of time required to complete work was discussed with directors. When Mears went with Townsend to Sandoval, to attend to business for old company, the latter paid all expenses. He paid for printing by-laws, $25 (p. 76); also for the books and seal of company; also for recording deeds for mining rights; also $5 for abstract of title to land bought from Ewing; also $35 for meetings of directors and stockholders.

Townsend reported to the directors what moneys he from time to time expended for company. He, with expert machinist, went to Indiana to examine machinery for company. This was reported to board (p. 77). His charge was reasonable, $66.

Henry Wellhoener, one of the directors, and secretary of the old company (p. 78), swears that he became secretary and treasurer six weeks after old company was organized, and remained until May 2d, 1878, when last meeting was held in East St. Louis, Illinois (p. 79). The directors fixed the salary of the president and *ex officio* superintendent at $150 per month, in the fore part of January, 1878, also adopted by-laws at meeting held at No. 614 North Ninth street, St. Louis, Mo. Afterwards, by resolution, Townsend's expenses on business for company were to

be paid by it (p. 81). The $10,000 allowance to Townsend was for his services, prior to organization of company, in securing mining rights, traveling expenses, etc. He began getting up enterprise in summer of 1877 (p. 82). Townsend did not vote for the allowance. I did, thought it was right. Geo. Wharton is now dead (p. 83). Townsend bargained for the Ewing land. Wellhoener paid $34, and Isaac Main $36. I never had possession of deed from Ewing (p. 86). Think Townsend acted for best interests of the company (p. 87). Think Townsend secured mining rights to 940 acres (p. 88). Think it would cost $20,000 to sink shaft and put in machinery. When that was done, property was worth $60,000. I think I gave Horton a certificate for ten thousand dollars stock. This certificate was made out under the negotiation with Townsend. Horton put up a check with me, as secretary, for one thousand dollars, to be paid on the stock issued to him. I gave him a certificate without Townsend's signature. Horton afterwards came back and returned the certificate, and asked for his check. I returned him his check, and he returned the certificate which I had signed as secretary (page 91). This was a day or two before or after April 30th, 1878. I don't know that I put a seal to the Horton certificate. Townsend, as president, had called a meeting of the directors to be held in St. Louis, Missouri, 2d of May, 1878 (page 92). The books of the company were taken from me after that, as was also the seal; I don't know the date (page 93). I don't know whether or not Townsend secured 436 mining rights (page 94). I supposed Townsend paid for the acknowledgments of deeds of mining rights

(page 95). The fare from St. Louis to Sandoval and return was $3.80. Townsend paid $25 for printing by-laws. He also paid for the seal (page 96). Townsend stated that the seal cost $4. Townsend made a trip to Indiana, taking James Collins with him to examine machinery for company. He charged $65 for the trip; for his time he charged $10 a day. Collins charged $10 a day for his services. The bill was in all $30 (page 97). I think Townsend paid for the corporation license fee $7.50 (page 98). I was at the receiver's sale in September, 1878; two persons bid for the property—Isaac Main and Andrew Roll. Isaac Main was the purchaser at $200 (page 105).

C. E. GARTSIDE, among other things, swore that he was president of the Gartside Coal Company (p. 106), and had been connected with mining coal since 1869; that the value of coal mining rights per acre on the Cairo Short Line, 20 miles from Sandoval, was $30 per acre (p. 107).

OZIAS TOWNSEND swore, among other things, that he was the person whose name appeared in the certificate of incorporation of the old company (p. 108). Says he subscribed for 391 shares of stock (p. 109). I was to sell 380 shares for the benefit of the company. I sold to Isaac Main ten shares and to Francis H. Edwards ten shares. I sold ten thousand outside (p. 110). I sold to Wharton the ten thousand and to Wm. Manning fifteen thousand more. I received $1,000 on account from Wharton. I could not complete the sale to Wharton, because I did not have the seal of the company. The seal had been stolen from me. Wharton got four thousand of my paid-up stock (p. 111). On the first of May, 1877, Isaac Main and

Francis H. Edwards went to Wellhoener's and had a meeting, and stole my books and seal and everything belonging to the company, so that I could not sign any stock or could not seal any stock. The next thing I heard of the books and seal they were in Sandoval, Illinois (p. 112). If the books and seal had not been stolen I would have had no trouble in disposing of the ten thousand dollars of the stock to Wharton (p. 113). Wharton was a man of means and so was Manning (p. 114). On the 6th of November, 1877, Joshua Ellis and many others made a conveyance to me, in trust, of many mining rights. (See Record, p. 232.) (115.) I negotiated the purchase from Ewing of the two acres of land. I paid the money. I gave the money to Wellhoener's secretary to pay for the land, that is, I gave him $160.00 and an order on Isaac Main for $50.00. (116) I was not at the sale of the property of the company by G. W. Herod, the receiver, on the 28th of September, 1878 (p. 117). I think I could have sold 380 shares of stock and paid Seymour for sinking the shaft and putting the mine in running order, within two years from the 7th of November, 1877, if I had not been prevented by Main and others. I paid for the recording of all the deeds, I don't remember the amount. I paid Mears $5.00; I paid the notary public $60 or $100. I paid B. Gratz Brown, for legal services towards getting up the documents for the company's mining rights, $30.00; books and seal, $25.00; acknowledgment of deeds, $60.00; recording of deeds, $25.00; abstract of title, $5.00; Frank Seymour, $60.00; advertising notice of meetings, $30.00 and $25.00; cash advanced to company, March 4th, 1878, $20.00; traveling expenses,

December 18th, 1878, $20.00; expenses to Indiana to examine machinery for the company, $65.00, December, 1877; license for the company, $250.00; certificate of incorporation, $5.00. (p. 124.) The ten thousand dollars of stock given me for services prior to January, 1878, was issued to me by the secretary, Wellhoener, T. W. Blackman and John B. Mears.

(The testimony of Townsend begins on p. 107 and extends to p. 130. The deposition of Geo. W. Wharton, which was taken in the case of Edwards and others against the St. Louis & Sandoval Coal & Mining Company, was here introduced.)

GEORGE WHARTON:—I have lived in St. Louis 40 years. Am in the real estate business. On the 1st of May, 1878, Townsend, president (p. 130), agreed to give me $4,000 paid-up stock. I was to take $10,000 unpaid stock, and pay ten per cent., the amount assessed on the other stock. All arrangements were made. Manning was to take from $10,000 to $15,000, and he and I were going in there to put the thing through. I got the $4,000 stock, went to the secretary and gave him a certified check on U. S. Saving Institution for $1,000. This was the 1st of May. He was to give me $10,000 in stock. On the 2d of May I asked for the stock. He kept my check from the 1st to the 2d of May. I demanded my stock or money. Townsend said he had no seal; that it had been stolen. May 2d they made me president, but I had no stock. My arrangement with Townsend was for me to take $10,000 stock and run the machine over there and get Manning in with me. I was to have $4,000 paid-up stock. I complied with my part of the contract, but the could not give me the stock ($10,-

000). They had stolen the seal—the books were gone. We had a meeting in East St. Louis. I met Wellhoener, Blackman, Mears and Seymour (p. 131). Edwards and Main were also there. Wellhoener, Main, Blackman and Mears claimed to be directors; Wellhoener was secretary. I found I was in a bad nest. I thought my best plan was to get my money. Townsend showed no bad faith. When I went to East St. Louis, I knew there was a conspiracy to throw Townsend out, and that was what they wanted me president for. I thought if they would do a dirty trick to him, they would do the same by me if they had a chance. Manning and I made arrangements to get the money to run the business. I had for my share, and know that Manning was amply able, as he was going out of the insurance business and had made a good deal of money. I was afraid when shaft was sunk they would play some trick on us, after we had spent our money. I was afraid Sandoval men wanted to get money from St. Louis to complete the shaft, and would then kick us out. They had held no meeting to put Townsend out—he had done nothing to be put out, only that he had not got the money and could not get it. The thing stopped for want of money. Wellhoener wrote to Seymour to come and get his money; but when I saw this trick going on, I began to think I might get my foot in it, and I left. Townsend had made arrangements with Manning and myself, by which ample money had been secured to carry the thing through, if they had carried it out in good faith. Carrying the arrangement out was prevented by the combination or conspiracy (p. 132). Wellhoener wrote out the stock on 1st of May, 1878, ready for signing and sealing.

At meeting at East St. Louis, I think, I heard something about the seal—I began to smell a rat. I remember Main came over there in a great glee, *and said they had the books, seal and everything*. Main, like the balance, was for throwing Townsend out. I saw no ground for this. They knew about arrangement with Manning and myself. They had my thousand check—no; I got it back just before the meeting began. They knew I had deposited the thousand dollars, and I told them Manning was a very able man. I told Main, Edwards and the rest all about it. They knew all about it. I sent for Seymour—for I had made arrangements for getting the money. They objected to paying Townsend the salary. They were paying, I think, one hundred a month (p. 133). When they elected me president, they expected me to pay all my expenses to and from St. Louis, and superintend their business over there and not get a cent, and I told them they could not come it. They told Seymour he would get his money. I told Seymour about the arrangement Townsend had made with me to furnish money. They passed a good many resolutions (on the record) that I knew were bogus. I accepted the office of president. I stayed there amongst them. I knew that every bit of it was illegal; that I was president without stock, etc. Blackman and Main, and pretty much all, asked me to go over to East St. Louis. We started from this side, went over and organized ourselves in a beer-house. Main and associates, before going to East St. Louis, took the advice of a lawyer as to propriety of holding a meeting in East St. Louis (p. 134). Blackman seemed to be the officiating spirit—said it was all right. They were talking about selling

out the company, and selling out Townsend. Main and a doctor said they could get rid of Townsend by selling out the company. It was a combination to throw Townsend out and forfeit his stock. It was made up amongst them to throw Townsend out and get me in there, and get his stock, so that he could not be president. That is what they said. In the event I and Manning did not put our money into the concern, and carry it on successfully, they were going to throw it into court, and oust Townsend in that way. There is no doubt about that. Main seemed to be the leading spirit, and Dr. Edwards. After the meeting was over, they said that now, that they had got rid of Townsend, they had a way to sell and buy it in, and avoid the law of Illinois, which gave him the right to be president one year. They wanted to overcome the law of Illinois (p. 135). They thought I was going to pay that thousand dollar check back. At that meeting I heard something about Seymour going to bring suit against the company for labor. Edwards and Main were to go his security. If anything else happened, it only served to impress me with the idea that if I put my money in there I would never get it back. I did not give the $4,000 check back to Townsend. Before investing, I went out and looked at property. I thought if properly managed it would make money. The shaft had gone about 100 feet. The company had some hundreds of acres of mining rights—near a thousand acres. The rights, titles and interests might probably be worth twenty or thirty thousand dollars (p. 136). The mining rights of the company are worth an immense sum. I have been in the coal mining labor, and I understand it. An acre of that ground

would have 800,000 bushels, from that to a million—every square foot of coal is a bushel. The vein is six feet. I would have paid five or ten thousand dollars for the rights of the company at the time the meeting was held.

(p. 137.) I was to take from the company ten thousand dollars of stock. Blackman interceded between T. and myself. I (pp. 138, 139) know there was a conspiracy in that meeting. I saw in the minute of a meeting where they had given T. $10,000 of stock for his services. I returned to Townsend the $4,000 of stock, and the certificate was canceled. I returned stock to T. about two weeks after May 2d. I have leased a coal mine over on the other side, and have been working at that all summer—am pretty well posted in coal mining, have been in that business one year—the last. They wanted to get Townsend out and (p. 142) then let me take a turn a little while and then they would have bounced me. That is my opinion, after I saw what was going on. I did nothing wrong while president, but I knew it was all illegal. I thought it a good joke, and that I would pass it off as well as they did. I just laughed up my sleeve, as sure as you are born. I thought if I got out of that meeting once, that they would never catch me coming over there again (p. 143). Townsend always acted and admitted that a large portion of stock held by him was to be transferred to different persons in order to raise money to carry on the work, the company was to get money.

About 436 "mining rights" were conveyed to Ozias Townsend. (See Record, from p. 232 to p. 241.) His salary as president and superintendent was fixed December 20th, 1877, by the board of directors, at $150

per month, expenses added. (See Record, p. 241.) The salary was to begin on January 1st, 1878.

VII.

THE MINUTES OF THE STOCKHOLDERS AND BOARD OF DIRECTORS.

The minutes show (p. 244) the election of directors on the 8th of December, 1877, at East St. Louis, Ill. At the same place and on the same day Townsend, Main, Wellhoener, Mears and Sheals (all being present), were elected directors, and they elected officers. The board of directors then adjourned until December 20th, 1877, at 1 o'clock P. M., to meet at St. Louis, Mo. A meeting was held on the 20th of December, 1877, pursuant to adjournment. Townsend, Main, Wellhoener and Mears were present. At this meeting Townsend's salary, as president and *ex officio* superintendent, was fixed *at $150 per month*, to commence January 1st, 1878.

Isaac Main (who was one of the parties who soon after tried to remove Townsend) was present. This meeting of December 20th, 1877 (p. 242), adjourned to meet at St. Louis, Mo., at 1 o'clock P. M., January 10th, 1878. The directors met, pursuant to adjournment, on the 10th of January, 1878. Townsend, Main, Wellhoener and Mears were present. The minutes of last meeting (which fixed Townsend's salary at $150 per month) were approved. Directors met February 14th, 1878. Townsend, Wellhoener, Mears and Main present. Minutes of last meeting read and approved. Other minutes appear on pages 243, 244, 245, 246, 247.

On May 23d, 1878, Isaac Main wrote to Townsend, as follows: "Sandoval, Illinois. According to our minutes, you have no right to call a meeting. If you want to make propositions, make them to Wharton and Manning, and if they accept them, we will take under advisement, as the time is approaching when the Court of Chancery will say who owns the whole thing. Isaac Main."

(247) *Comment:* At the time this letter was written Main had paid, on his $200 stock, $50 (p. 189).

The books of account of the St. Louis & Sandoval Coal & Mining company (p. 188), show that on January 31st, 1878, the company was indebted to Townsend, for salary as superintendent, in the sum of $150, and that on February 28th, 1878, it was indebted to him, for salary, in the further sum of $150.00. The record shows that prior to January 1st, 1878, the company was indebted to Townsend in large sums for his services, and for money expended by him for company.

In confirmation of the truth of Townsend's testimony, the books of the company show that on April 30th, 1878, Geo. Wharton gave his check to company for $1,000 (see p. 189). On May 1st, 1878, Wharton withdrew his check. (*Comment:* Wharton is the party whom Townsend had induced to take the $10,000 worth of stock, and who actually paid to company, as per agreement, $1,000.)

The by-laws of company are on pages 225–6–7–8.

The bill in equity filed by Edwards, Main *et al.*, on June 27th, 1878, begins on page 248. A brief history of this bill is here given.

On June 10th, 1878, the company entered into a contract with Frank Seymour to sink a coal shaft, at a

cost of $10,800. He began the work, and continued it until the shaft was sunk one hundred and fourteen feet. Seymour ceased to work on March 10th, 1878, and began, with the assistance of his counsel, the study of equity jurisprudence. He made rapid progress, and on June 27th, 1878, Edwards, Seymour, Isaac Main and others filed their bill in the Chancery Court of Marion County, Illinois. The bill states, *inter alia*, that there was then due Seymour "*some seventeen hundred dollars;*" that a large portion of the stockholders were insolvent; that the company could not realize more than $8,000 on its stock subscriptions, which would not be enough to carry the enterprise through; that the company had incurred an indebtedness of nearly $3,000, and was hopelessly insolvent.

Isaac Main, one of complainants, and a director, was served as an officer of the company. The bill was taken *pro confesso*, and a decree entered, finding the facts as alleged; that there was due Seymour "*about seventeen hundred dollars*," and that the company was indebted "*three thousand dollars.*" There was no decree for the payment of money by or to any one.

A receiver (who, if he ever gave a bond, the record does not disclose it), was appointed to dispose of the company's property, make conveyances to the purchasers, and pay the debts. The decree dissolved the corporation.

The receiver, George Washington Herod, took possession, and sold all of the property and mining rights to Isaac Main for $200, and made him a deed.

All was reported and approved. Main, one of the complainants in the bill, *served* as a director of the de-

fendant corporation; the only officer served (the others being non-residents), becomes the purchaser for $200! Main, complainant; Main, detendant; Main, purchaser.

Comment: It is seldom, even under the liberal rules of chancery practice, that a party can occupy so many positions *apparently* antagonistic.

The receiver made the sale at Sandoval, Ill., on October 28th, 1878. About one month later, property purchased by Main for $200 was sold by him to the Sandoval Coal & Mining Company for $2,400.

The bill was filed June 27th, 1878; in less than two months, on August 15th, 1878, the corporation, without *legal* notice, was dissolved, and a receiver appointed under the decree of the court.

The receiver also reported that the company owed about $2,000, and had good stock subscriptions to the amount of about $8,000.

The case of Edwards, Main, *et al.* vs. St. Louis & Sandoval Coal & Mining Company, was taken by the company to the Supreme Court, and was decided June 21st, 1882.

The court held: "That the service as to the company was void, the director (Isaac Main), with whom the notice was left, being a party complainant in the suit; and the service being *void*, advantage might be taken of it on error as well as in the trial court."

The case was reversed, though the receiver's appointment was affirmed, in order to protect property for all concerned.

See St. Louis & Sandoval Mining Company vs. Edwards *et al.*, 103 Ill., p. 472.

In July, 1883, after five years of litigation, the chancery case was argued before Judge Snyder, in vacation. A decree was entered dissolving the corporation.

In 1883, St. Louis & Sandoval Coal & Mining Company asked permission of the Circuit Court (in which the receiver was appointed), to sue the Sandoval Coal & Mining Company in ejectment; the permission was given, and suit was brought. At August term, 1883, the ejectment suit was tried, upon an agreed state of facts, before the Marion County Circuit Court, without a jury. The court decided in favor of the defendant. The St. Louis & Sandoval Coal & Mining Company took the case to the Supreme Court, to November term, 1883. On the 27th of September, 1884, the Supreme Court reversed the judgment.

See St. Louis & Sandoval Coal & Mining Company vs. Sandoval Coal & Mining Company, 111th Vol. Illinois Reports, p. 32.

After the decision of the Supreme Court, the St. Louis & Sandoval Coal & Mining Company sued J. S. Martin *et al.* in trespass, for four hundred thousand tons of coal (valued at $1.25 per ton), taken by them from the lands of the company. After the decision of the Supreme Court, on the 27th of September, 1884, the Sandoval Company procured, *it is claimed*, quit-claim deeds, for mining purposes, from some of the parties who had, in years 1877–8, conveyed same mining rights to St. Louis & Sandoval Coal & Mining Company.

After the Supreme Court had decided the ejectment suit in favor of St. Louis & Sandoval Coal & Mining

Company, and remanded it for further proceedings; Edwards *et al.* filed their supplemental bill; Sandoval Coal & Mining Company became a party defendant, answered, and filed cross-bill against St. Louis & Sandoval Coal & Mining Company, claiming certain equities, among others for thirty or forty thousand dollars of permanent improvements put upon the property. The St. Louis & Sandoval Coal & Mining Company claims of the Sandoval Coal & Mining Company the value of four hundred thousand tons of coal taken from the lands of the former; also the possession of all the property, including 940 acres of coal and mining rights. Questions touching said Sandoval coal mine have been twice before the Supreme Court of Illinois, once in the Court of Appeals of Illinois, and often in the Circuit and Chancery Courts, resulting in decisions in favor of the St. Louis & Sandoval Coal & Mining Company.

See St. Louis & Sandoval Coal & Mining Company vs. Edwards *et al.*, 103 Ill., p. 472;
St. Louis & Sandoval Coal & Mining Company vs. Sandoval Coal & Mining Company, 111 Illinois Reports, p. 32.

They were again, for the third time, in the Supreme Court of Illinois, in 1886.

See 116 Ill., p. 170.

By reference to the record, and to the above cases in the Supreme Court of Illinois, it will be seen that the issues now involved in the case now before this court have never been considered or adjudicated.

ISAAC MAIN testified that he was one of the directors that voted to fix Townsend's salary at $150 per month (p. 196). He admits that he took the seal and books of the old company (p. 208), and virtually admits that the meeting of May 2d, 1878, when he and others undertook to remove Townsend, was illegal (p. 210).

VIII.

ASSIGNMENT OF ERRORS.

The court erred in dismissing the amended bill of complainant, and in entering a decree for the appellees, and erred in not entering a decree for the complainant.

IX.

BRIEF.

It is a familiar principle that if the stockholders of one corporation organize another, and transfer to it all the property of the former, without paying the former's debts, the obligations of the old company may be enforced against the new one to the extent of the assets transferred to it; Hibernia Insurance Co. vs. St. Louis & N. O. Transportation Co., 10 Fed. Rep. 596; 13 Fed. Rep. 516.

The stockholders of the St. Louis & Sandoval Coal & Mining Company are the *identical* stockholders who organized the new company and transferred to the latter—without consideration—all the assets of the old company, leaving it insolvent, and issued shares in the capital stock of the new corporation to holders of shares in the capital stock of the old. This *ingenious fraud* was accomplished—*in the name of the law*—and by invoking the innocent, yet careless assistance of the courts.

A debtor corporation cannot discharge its obligations by changing its name; San Francisco, etc., R. R. Co. vs. Bee, 48 Cal. 398.

The old and new companies—if not identical—are closely related. The Old Maid, after a careful view of the Siamese Twins, with far less evidence, pronounced *them* brothers.

It will be seen from the record that the old company had no property that could be reached by suit at law, nothing but worthless unpaid balances on subscriptions, and nothing but the equitable right of complainant, as a creditor, to follow the property pretendingly sold by the receiver—*under a void decree*—to Main, and by him sold to the new company. As the new company was not a *bona fide* purchaser for value, the complainant can follow said property, as a *trust* fund, upon which he has a *lien*, and which can be subjected to the payment of his debt; Wood vs. Dummer, 3 Mason, 308; R. R. vs. Howard, 7 Wall. 392.

It is idle to cite authorities upon a question so well settled.

The new company took all the property of the old—*cum onere*—or charged with the debts of the latter.

Main *et al.* evidently desired to wreck the company and get control. Upon this subject the testimony of Wharton, Mears and Wellhoener is conclusive. The testimony of Main is to the same effect. The bill was filed on the 27th of June, 1878. On the 23d day of May, about a month before, Main writes that they desire to throw the case into chancery to see who owns the mine, or words to that effect. On the 2d of May, 1878, a meeting of the directors was called to be held

in St. Louis. Main succeeded in getting the books and seal of the company, and repaired to East St. Louis, where an illegal meeting was held.

Admitting, for the sake of argument, that there was due Seymour $1,700 on the 2d of May, under his contract, he was to leave with the company forty per cent., which would have left due him about $1,000. Mr. Townsend had made arrangements with Wharton for funds to pay all debts and run the work. There was, on the 2d of May, 1878, a check in the hands of the secretary for $1,000.

It is not pretended that Seymour was a creditor until the 10th of March, 1878, yet, on the 2d of May, with funds in their hands, secured by Townsend's arrangement with Wharton, sufficient to pay Seymour all that was then due under his contract, they attempt to persuade a court that the corporation was insolvent. The contract with Seymour was dated January 18th, 1878. The arrangement with Wharton was made before May 2d. He took $10,000 in stock and paid in cash $1,000 to close the contract. He and Manning were to take altogether twenty or twenty-five thousand. They were to furnish all money necessary to carry out the enterprise. The work was to go forward immediately. This was the condition of affairs when the meeting in East St. Louis was held on the 2d of May, 1878. On the 27th of June the bill was filed. A receiver was appointed in August, and an order of sale made. The receiver reports that he sold the property on the 28th of September, 1878, in Sandoval, to Isaac Main, for $200! Isaac Main, who had paid $50 on his stock, becomes the purchaser!

One month later Main sold same property to Sandoval Coal & Mining Company for nearly $2,500.

The old corporation was perfectly solvent, and not only so, but was making, and had made, arrangements to pay all debts of every description when the books, papers and seal were carried off by Isaac Main, on the 2d of May, 1878.

Townsend's services, for the old company, began in 1877, and ended in January, 1886.

Conclusion.

For eighteen years appellant has been endeavoring to secure his rights in the State Courts of Illinois. Twice he has had favorable decisions from the Supreme Court of that State. Now—upon questions never in *issue*, and never *adjudicated* in the State Courts—he asks *here* for a favorable decision. In the language of Gen. Grant: "*Let us have peace.*"

Respectfully submitted,

UPTON M. YOUNG,

Counsel for Appellant.

St. Louis, Mo., February 25th, 1895.

FILED.
APR 25 1895
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

OZIAS TOWNSEND,
APPELLANT,
vs.
THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY ET AL.,
RESPONDENTS.

No. 308.
In Equity.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

BRIEF IN BEHALF OF APPELLEE.

GREEN B. RAUM,
Solicitor for Appellee.

Wm. J. Kesl, Printing and Stationery, 317 Olive St.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

OZIAS TOWNSEND, Appellant,

vs.

THE ST. LOUIS AND SANDOVAL COAL AND MINING COMPANY ET AL., Respondents.

No. 308.

In Equity.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

BRIEF IN BEHALF OF APPELLEE.

This is a suit in Equity brought by Ozias Townsend (Rec. p. 19,) a citizen of Missouri, against The St. Louis and Sandoval Coal and Mining Company, Sandoval Coal & Mining Company and Isaac Main, Lambert Noland, Charles Reinhart, Jacob Lighty, Margaret Edwards, executrix of

last will of Francis H. Edwards, deceased, and Lucinda N. Rockwood, executrix of the last will of C. F. Rockwood, deceased, stockholders of The St. Louis and Sandoval Coal and Mining Company, and Frank Seymour, a contractor with The St. Louis and Sandoval Coal and Mining Company, citizens of the State of Illinois.

The suit is instituted for the purpose of recovering from Sandoval Coal and Mining Company and other defendants sums of money claimed to be due the complainant from St. Louis and Sandoval Coal and Mining Co.

For services rendered before the St. Louis and Sandoval Coal and Mining Co. was organized (p. 25 to 35).....	$10,000
For expenses paid.....	710
And for salary as President of said Co. at $150 per month from December, 1878, to January 25, 1886 (R., p. 22).....	12,750

The record shows that some time, say about December, 1887, The St. Louis and Sandoval Coal and Mining Co. was organized under the laws of Illinois for the purpose of securing coal property and operating a coal mine at Sandoval, Illinois, with a capital stock of $50,000, that sixteen persons made subscriptions to the stock, that a Board of Directors consisting of five persons was elected, and that Townsend was made president, that two acres of land and a number of mining rights were conveyed to the company, that the company on January 10th, 1878, made contract with Frank Seymour to dig a shaft to the coal, that on March 10th, 1878, the shaft had been sunk 114 feet (p. 25).

That on the day of March, 1878, the board of directors held a meeting in East St. Louis, Illinois, when Townsend, the appellee presented an account against the

company for $12,050, as compensation for services and for money expended by him for the company, and asked to have the same allowed by the board (p. 23).

That the board adopted certain preamble and resolutions in regard to said account allowing Townsend $10,000, in full of his account, the sum to be credited on his subscription of stock if he so desired (p. 24).

That one of the directors, Isaac Main, voted against allowing the claim.

That Townsend accepted the proposed settlement and issued with the secretary $10,000 of stock full paid, as follows: to his wife, Elizabeth E. Townsend, $5,000, to George W. Wharton, $4,000 and to True W. Blackman, $1,000.

That the work was stopped on the mine.

That in June, 1878, Isaac Main, Frank Seymour, Francis H. Edwards, Lambert Noland, Charles Reinhardt, Jacob Lichty and C. N. Rockwood, all stockholders, Frank Seymour being the contractor for sinking the shaft, filed a Bill in Chancery in the Marion County Illinois Circuit Court against The St. Louis and Sandoval Coal and Mining Co., Ozias Townsend and all other stockholders in said company.

The object of this bill was to cancel the $10,000 claim of Townsend against the company and secure a settlement of its just debts (pp. 25 to 35). The bill alleged that said account was without consideration and was fraudulently allowed.

The record shows that a receiver was appointed in this case, that a decree was made for the sale of the property, that the property was bought in by Isaac Main.

That a new corporation was organized with the name of Sandoval Coal and Mining Company and that Main sold the property to this company for over $2,000, and applied the money to the payment of the debts.

The record shows that this case was appealed to the Supreme Court of Illinois, where it was reversed for want of proper service, and remanded for further proceedings, the receiver being continued.

That a supplemental bill was filed at the February Term, 1885, of said Circuit Court, making said Sandoval Coal and Mining Co., a party defendant.

The said company filed its answer admitting all the allegations in the original and supplemental bills filed by Main and others, and said company filed its cross-bill to said original and supplemental bills, in which were recited the facts in substance as hereinbefore stated, and also alleged that it had in good faith bought said property from said Isaac Main who had paid all the debts of The St. Louis and Sandoval Coal and Mining Co., amounting to $2,465.30, the claim of said Townsend not being embraced therein; that it had made valuable improvements upon and under said tract of land to the amount of $25,000; that the complainants in said bill were only legal stockholders in The St. Louis and Sandoval Coal and Mining Co., and that said defendants, Osias Townsend and others, were not *bona fide* stockholders in The St. Louis and Sandoval Coal and Mining Co., and prayed the court to so decree, and that the complainants were the only valid and legal stockholders in said corporation who had any right to dispose of its property; that said complainants be ordered to convey in the name of The St. Louis and Sandoval Coal and Mining Co. by valid conveyance to said Sandoval Coal and Mining Co., said tract of land on which said shaft was sunk, and also all mining rights held by said first named company — and in default of such conveyance by a day to be fixed by the court that a Master in Chancery of said court execute a deed of conveyance and deliver the same to said Sandoval Coal and Mining Co.; that said St. Louis and Sandoval Coal and Min-

ing Company be restrained from prosecuting an ejectment suit against the Sandoval Coal and Mining Company in said court to recover said property; also from prosecuting an action of trespass against James S. Martin and others, officers and agents of said Sandoval Coal and Mining Company for trespassing on said property; also that said original suit against the Sandoval Coal and Mining Company be dismissed.

To this cross-bill said Ozias Townsend and The St. Louis and Sandoval Coal and Mining Company and other defendants filed their answers at the February Term, 1885, at said court, and a replication to said answer was filed at the same term.

At the August Term, 1885, at said Court, said case came on for hearing on said original and supplemental bills and answer and replication thereto, and on said cross-bill and the answers thereto and replication and the evidence in the case, and on the 25th day of August, 1885, said Court rendered a final decree granting the relief prayed for in said cross-bill to the Sandoval Coal and Mining Company.

Said Ozias Townsend and the St. Louis and Sandoval Coal and Mining Company and other defendants to said original, supplemental and cross-bills prayed an appeal to the Supreme Court of the State of Illinois, and on the 25th day of January, 1886, by the consideration and judgment of said Supreme Court the decree of the Circuit Court on the original, supplemental and cross-bills were all affirmed. (See pp. 25 to 35).

The present suit was instituted by said Ozias Townsend in the Circuit Court of the United States for the Southern District of Illinois in 189— long after the decision of the Supreme Court of Illinois just recited.

The brief of appellants attorney gives a substantial abstract of the bill as filed setting forth the grounds upon which the suit is predicated see pages 3 to 24 of said brief.

The defendant Sandoval Coal and Mining Company filed its answer as a defence to said suit substantially as follows: —

III.

ANSWER OF SANDOVAL COAL & MINING COMPANY.

(Pages 35 to 46): —

"This defendant, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said amended bill contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says: —

It believes that it is true that the complainant and others did attempt to organize the St. Louis & Sandoval Coal & Mining Company, in December, 1877, substantially as in amended bill stated, and that parties subscribed for the capital stock, as in bill stated; but this respondent submits to your honor whether the facts as stated in amended bill do not show that said St. Louis & Sandoval Coal & Mining Company (hereinafter for convenience called the 'old company'), was ever legally organized under the laws of the State of Illinois, and whether it could enter into any valid contract for services or otherwise.

Furthering answering, the respondent says that it knows nothing of its own knowledge about services performed or money expended for said old company by said complainant, as in bill charged, but upon information and belief this respondent denies that said complainant spent, from July 1st, 1877, to January 1st, 1878, or any part thereof, in tak-

ing or securing mining rights for said old company, or in getting up its organization under the statutes of the State of Illinois; denies also that complainant took or secured 436 or any other number of mining rights for the use of said old company; and this respondent denies that complainant paid, laid out or expended, of his own money, the sum of $2,700, or any other sum, in securing said mining rights or the incorporation of said company, as in said amended bill stated. This respondent knows nothing of any agreement between the complainant and the subscribers for stock for pay or compensation for his time and services, as in said amended bill stated.

Further answering, this defendant denies that said complainant paid Samuel Ewing, with his own money or otherwise, $200, or any part thereof, for these two acres of land in bill described, but avers the truth to be that this defendant paid said Ewing for said land; and this defendant further denies that the said complainant obtained any valid title to any mining rights for said old company, but states the truth to be that a number of the owners of real eatate in the vicinity of said two acres of land conveyed to said complainant, in trust for said old company, the right to take coal from under their land, upon condition that said old company would sink a shaft to a paying vein of coal, and work a coal mine there, within two years from the date of such conveyances, and that said shaft was not sunk to a paying vein of coal by or for said old company within the time limited; wherefore said mining rights were not earned, but forfeited, by said old company.

And this defendant charges and shows to your honor that whatever mining rights or rights to mine coal it has in the vicinity of said two acres of land, it received by purchase or donation from the owners of the land directly, and not from its purchase from Main, as in bill stated.

Further answering, this respondent says that it knows

nothing, except as informed by said bill of complaint, of a meeting of the board of directors of said old company, in the city of St. Louis, Mo., on the 20th of September, 1877, at which complainant's salary, as president and superintendent of said old company, is said in said amended bill to have been fixed at $150 per month, and a set of by-laws in said bill to have been adopted by said board of directors of said old company, but this respondent charges that all that was done, if there was anything done, at said meeting, was illegal and void, because said meeting was not authorized, nor were its acts ratified, as is required by law, as this defendant is informed and believes.

The defendant, upon information and belief, denies that said complainant acted as president of said old company, and discharged the duties of such president from the 1st day of January, 1878, until the 25th day of January, 1886, or any other time after May 2d, 1878.

This respondent, further answering, says that it knows nothing of its own knowledge of a meeting of the directors of said old company in East St. Louis, on the day of , 1878, but this respondent charges that the action of the board of directors, when the director Isaac Main was not present, by which one-fifth of the capital stock of said old company was voted to this complainant, was illegal and fraudulent, and was one of the causes which led to the dissolution of said old company.

And this respondent, further answering, says that the complainant's bill herein, it thinks, set out substantially the facts set up in the bill of Francis H. Edwards *et al. vs.* said old company *et al.*, including the complainant, which bill was filed in the Circuit Court of Marion County, Illinois, in June, 1878, in which bill it was, among other things, charged that said $10,000 had been fraudulently credited to the complainant. It is also true, that no summons was then served upon the complainant, but he

and the other non-resident defendants to said bill were served by publication of notice, under the statute of Illinois. It is also true, that a decree *pro confesso* on said bill was taken and entered of record at the August term, 1878, of said Circuit Court, by which decree said old company was dissolved. George W. Herod was appointed receiver, with authority to take and dispose of the property of said old company and pay its debts; that he, as receiver, sold the property to Main for $200, and reported the sale to said Circuit Court at its February term, 1879, and said Circuit Court then approved said report and affirmed said sale, but this respondent denies that said property was, at the time of said sale, worth $20,000, and says that, in its then condition, it was not worth more than it sold for to Main. At the February term, 1880, of said Circuit Court of Marion County, Illinois, A. McCabe, William H. Ross, John B. Mears and Elizabeth Townsend, some of the defendants in the original bill, who had been served by publication of notice, upon petition under the statute of Illinois, were allowed to come into Circuit Court and answer said bill. They then filed their answer, denying some of the material allegations in the bill; replication to their answer was then filed, and the cause continued for testimony. At the February term, 1881, of said Circuit Court, the cause was heard on bill, answer of said Ozias Townsend *et al.*, replication thereto, records, depositions and testimony taken by a special master in chancery, and, after a full hearing and due consideration of said court, the court ordered and decreed that the original decree, made and entered of record at the August term, 1878, in said cause, stand as confirmed against the said defendants so answering, with costs. This respondent says that this decree of February term, 1881, was never reversed, and is now in full force and effect. It has never been reviewed by any court, and

cannot now be reviewed by any court; and it is in the face of that order of said Circuit Court that the complainant herein now comes into this court and claims pay for services, as president and superintendent of said old company, after February, 1881. Further answering, this respondent says that it is true that in May, 1882 (but not in March, 1881, as in bill stated), the said decree of said August term, 1878, was taken to the Supreme Court of the State of Illinois by the said old company alone, not by the complainant herein, by a writ of error, and not by appeal, as in bill stated, and in June, 1882, the said Supreme Court affirmed so much of said decree of August, 1878, as related to the appointment of the receiver, and reversed the remainder of said decree for the reason of no valid service on said old company, as is fully shown by the opinion of said Supreme Court in the case of St. Louis & Sandoval Coal & Mining Company *v.* Francis H. Edwards *et al.*, 103 Ill. 472.

This respondent insists that this order of said Supreme Court does not affect said decree of February, 1881, nor do the reasons for said partial reversal apply to the complainant herein, he having answered said bill before the hearing at February term, 1881, in said Circuit Court as aforesaid.

This respondent, further answering, says that it is true that, said cause being remanded to said Circuit Court by said Supreme Court of Illinois, said cause was heard by said Circuit Court, at its February term, 1883, as in bill stated, and in July, 1883, a decree was rendered by said Circuit Court, finding said bill to be true, and dissolving said old company, approving the appointment of said Herred as receiver, and ordering said receiver to make further report, substantially as in bill stated; but this respondent denies that any appeal was taken from this last-mentioned decree, as stated in complainant's bill. Excep-

tions were filed to this decree by the attorneys of said old company, which were continued from term to term, until the February term, 1880, when the exceptions were overruled. The said receiver, George W. Herod then reported in substance the sale made by him to Main, as before reported, and that Main had sold said property to the Sandoval Coal & Mining Company, this respondent, for enough to pay the debts of the old company; that those debts were paid, and, as far as he knew, said old company had no other property, and there was nothing further for him to do.

It is true, as stated in complainant's bill, that at said February term, 1885, of said Circuit Court, the complainants in the original bill filed a supplemental bill in said cause, making this respondent, the Sandoval Coal & Mining Company, a defendant, to enable it to set up its rights in said property, acquired since the filing of the original bill, and that this respondent then appeared and filed its answer, setting up its rights, and with its answer it filed its cross-bill for affirmative relief, making all the parties to the original suit, including the complainant in this suit, defendants to said cross-bill; that the answer and cross-bill of this respondent, among other things, state and charge, substantially, that in August, 1878, Francis H. Edwards *et al.* presented their bill in chancery in the Circuit Court of Marion County, Illinois, against the said old company, and the complainant in this bill and others, for a dissolution of said old company, for the appointment of a receiver, and other relief, and set out substantially the matters stated in the original bill, and that at said August term, 1878, said Circuit Court entered a decree in favor of said complainants, Edwards *et al.*, as prayed, as in this answer before stated. Said cross-bill also sets up the previous litigation between the parties to said original suit, as hereinbefore stated, and the orders and decrees of the

courts, as hereinbefore stated; cross-bill also states that Isaac Main, Lambert Noland, Jacob Lichty, C. N. Rockwell, Charles Reinhardt, Francis H. Edwards, Henry Wellhoener and Frank Seymour, were the only stockholders in said old company who ever paid anything on their stock; that the complainant in this bill, Ozias Townsend, Albert E. Ross, and the others who had subscribed, had paid nothing, and refused to pay their assessments, and were in such a pecuniary condition that they could not by law be compelled to pay; that they were not equitable stockholders in said old company, but that the stockholders who had paid their assessments, and were solvent and responsible for the amount of their stock, should be allowed in equity to attend to the disposition of the assets of said old company; that the stock issued by the complainant in this bill to his wife, Elizabeth Townsend, $5,000, to George W. Wharton, $4,000, and to T. N. Blackman, $1,000, as paid-upstock, was all fraudulently issued, with intent to defraud the said old company out of one-fifth of its capital stock, for which said old company never received anything.

Cross-bill further says that, after the purchase of said property by Main, this respondent, the Sandoval Coal & Mining Company, purchased said property from said Main for $2,465.30, paid to him, which was all said property was then worth for any purpose, and that said Main acted in said sale with the knowledge and consent of all the valid stockholders of said old company; that early in 1879 this respondent took possession of said property, spent some $2,500 in sinking the shaft and making other necessary improvements on said two acres of land, and that while said improvements were being made and said shaft was being sunk the said stockholders and the officers of said old company knew what was being done, and knew that this respondent claimed title to said property, and neither of them ever objected to said work being done, nor did

any of them claim title in said old company to said property until long after said shaft was sunk to a paying vein of coal, and then only by the complainant in this bill, and other pretended and fraudulent stockholders.

Said cross-bill further charges that said complainant, Ozias Townsend, without authority, in August, 1883, used the name of said old company in bringing a suit in ejectment for said property against this respondent; that said old company appealed to Supreme Court of Illinois, at November term, 1883, and in September, 1884, reversed said judgment, and remanded said cause to said Circuit Court for a new trial. Cross-bill asks that the trial of said ejectment suit be stayed until the suit on cross-bill be heard, and then perpetually enjoined. Cross-bill states that said complainant, in the name of said old company, commenced other suits against this respondent and its officers and employes in said Circuit Court, which it asks to be enjoined. Cross-bill further says that said shaft and other improvements are valuable to respondent, because of its rights to mine coal in the vicinity of said shaft, and connected with the underground work on said two acres of land, and that the two acres of land would be of little value to said old company, because it had forfeited its rights by failure to sink its shaft within two years from December, 1877. Said cross-bill prays substantially as stated in bill, and for other and further relief, and that defendants, M. E. Edwards, Lambert Noland, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Litchy, and Mrs. Rockwell, answer under oath, and that the complainant and the other defendants answer without oath.

Answers were filed by said old company, the complainant herein, Ozias Townsend, and some of the other defendants, not under oath, denying nearly all the allegations in said cross-bill, to which there was a replication by this respondent.

An answer under oath was filed by the defendant, Charles Reinhardt, and the other defendants who were called upon to answer under oath, stating that the allegations in cross-bill were true, as they are informed and believe, and that they know that it is true that Main purchased said property at the receiver's sale, and sold the same to this respondent to save the solvent stockholders from liability from the debts of said old company, and that such sale was made with the consent of such solvent stockholders; that Main was a director when said old company ceased doing business in March, 1878; that in May, 1878, at a meeting of the board of directors of said old company, the stock of said old company upon which no assessment had been paid was declared forfeited, and Ozias Townsend, the complainant herein, was declared not qualified to hold the office of president because he had no stock, said board of directors then adjourned in a wrangle and confusion and never met again, and the said old company after that never did anything towards completing or prosecuting its enterprise of sinking a coal shaft. This respondent, the Sandoval Coal & Mining Company, soon after its purchase from Main, as in cross-bill stated, took possession of said property, sank the shaft, put buildings and other improvements on said property, as in cross-bill stated, and is now in possession and operating it as a coal mine, and that the officers and stockholders of said old company knew of such occupancy and expenditures, and that said Sandoval Coal & Mining Company claimed title to said property, but never objected to such occupancy or improvements until long after the same were made, to wit: in 1883, and even then title to said property in said old company was claimed only by some pretended and fraudulent stockholders, who never paid anything to said old company for their supposed stock, and who use the name of said old company without authority in suits, as in cross-bill stated; that complainant in cross-bill (this

respondent) paid for said property all that it was worth, and more than it was worth, for any purpose, other than sinking and operating a coal shaft and mine, and that said old company was in such a financial, disorganized and confused condition that it could not have completed its enterprise; that the said two acres of land, with the improvements put thereon by complainant in cross-bill, would be of little value or said old company, as it had forfeited and lost its supposed mining rights and royalty by failure to sink a shaft, etc., within the time limited by the deeds conveying the same, but that said two acres of land are of great value to the complainant in cross-bill, not only because of what they have actually cost it, but because of the property, buildings, coal, and right to mine coal, which it has in the immediate vicinity of said coal shaft, the value of which would be lost if it had not the use of the shaft to operate the same, etc.; and this respondent admits that a trial was had at said August term, 1885, of said Circuit Court of Marion County, Illinois, but says that the findings and decree of said Circuit Court were not as stated in said amended bill of complaint, but they were as follows, to wit: —

August 25th, 1885, being the third Tuesday of the August term of this court, the court having duly considered the evidence introduced in this cause, as well as the arguments of the solicitors, and being now fully advised, does find that the material allegations in the cross-bill herein are true, and that the allegations in the sworn answer of Chas. Reinhardt, Mrs. M. E. Edwards, Frank Seymour, Isaac Main, Jacob Lichty, L. Noland and Mrs. L. N. Rockwell, to said cross-bill are also true; that the following named defendants in said cross-bill, to wit: Isaac Main, L. Noland, Jacob Lichty, C. N. Rockwell, deceased, now represented by his administratrix, Mrs. C. N. Rockwell,

Chas. Reinhardt, Francis H. Edwards, now represented by his executrix, Mrs. M. E. Edwards; Henry Wellhoener, and Frank Seymour, are the only stockholders in the St. Louis & Sandoval Coal & Mining Company who paid anything on their said stock, and that they are the only parties or stockholders who have any interest in or right to determine how the assets, if any, of said company, which has been dissolved by the decree of this court, shall be disposed of, to whom, and for what consideration; that the other defendants in said cross-bill, to wit: Andrew Roll, Johnson A. Power, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thos. B. Hill, Jas. Sheals, Jas. Collins, Jno. B. Mears, Wm. H. Ross, True N. Blackman. and Geo. W. Wharton, never paid anything for their supposed stock in said St. Louis & Sandoval Coal & Mining Company, and if any such stock was issued to them, or either of them, it was wrongfully and fraudulently done, and neither of them had any interest in the assets of said company, nor any right to interfere with the disposition of such assets, and that they, or some of them, have fraudulently confederated and wrongfully used the name of said St. Louis & Sandoval Coal & Mining Company in the prosecution of suits for the possession and injuries to what was once the property of said company, in total disregard of the wishes and interests of the valid stockholders of said company, and that they should be enjoined from using said name of said company, and from prosecuting any such suits; that at the instance and upon the motion of the valid stockholders in said St. Louis & Sandoval Coal and Mining Company, to-wit: Francis H. Edwards, Lambert Noland, Henry Wellhoener, Frank Seymour, Chas. Reinhardt, Isaac Main, Jabob Lichty, and C. N. Rockwell, one George W. Herod was by this court appointed to receive the property of said company under the direction and with the advice and consent of said valid

stockholders. He, he said Geo. W. Herod, on the 28th day of September, 1878, sold and conveyed to one Isaac Main all the property of said company, to-wit: the south half of four acres of land north of the right of way of the O. & M. R. R., and adjoining Primmer's addition to the village of Sandoval, and running north as far as Scott street, in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through the said four acres from said Primmer's addition eastward, in the west-half of the northeast quarter of section seventeen, T. 2, N. R. 1 east, in Marion county, Illinois, it being the same land in bill and cross-bill described, and also the buildings, mining fixtures, and all rights to mine coal in certain lots and lands described in bill and cross-bill.

That the said Isaac Main bought said property in cross-bill described at the instance and request of all the valid stockholders of said St. Louis & Sandoval Coal & Mining Company, for the purpose, if possible, of selling the same for enough to pay off the indebtedness of said company, which then amounted to over two thousand dollars, so as to save said valid stockholders from further liability for such debts, and that said Main afterwards, at their instance and request, sold and conveyed all the said property in consideration of the sum of $2,465.30, paid by the complainant in said cross-bill to said complainant, the Sandoval Coal & Mining Company, which said sum of $2,465.30 was all said property was then worth, and more than it was worth for any other purpose, other than mining purposes, after an outlay of a large sum of money to make it valuable for that purpose; that the Sandoval Coal & Mining Company, the complainant in said cross-bill, soon after its purchase of said property from said Main, to-wit: in the spring of 1879, took possession of said land and property, and with the consent and under the advice of all of said valid stock-

holders of said St. Louis & Sandoval Coal & Mining Company, sunk a coal shaft, erected buildings and machinery thereon, and expended in sinking said shaft and erecting such buildings and other permanent fixtures, and machinery over the sum of twenty-five thousand dollars; all of which was done with the knowledge, consent, direction and acquiescence of said valid stockholders, and no objections to such improvements were made or any title claimed to said property, by even the insolvent or fraudulent or pretended stockholders, until long after said expenditures had been made, and that such expenditures were made in good faith, under the belief that the title to said property was perfect in said complainant in cross-bill; that the complainant in cross-bill owns other lands, buildings and improvements, and mining rights in the immediate vicinity of and connected with the lands, etc., in controversy in this suit, both by buildings and machinery on the surface, and by works and passages under ground, which would be comparatively valueless to complainant in cross-bill, if its title to said two acres of land were not perfected. It is, therefore, ordered adjudged and decreed by the court—

1st.— That the defendants in cross-bill, Andrew Roll, Johnson A. Power, Albert A. Ross, Mary A McCabe, Ozias Townsend, Elizabeth Townsend, Thos. B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackman and Geo. N. Wharton, are not equitable or valid stockholders in said St. Louis & Sandoval Coal & Mining Company, and that they have no interest in the assets of said company, and have no right to interfere with the application of any such assets, nor to sue for the same.

2d.— That Margaret E. Edwards, as executrix of Fran-

cis H. Edwards, deceased, and Lambert Noland, Henry Wellhoener, Frank Seymour, Charles Reinhardt, Isaac Main, Jacob Lichty, and Mrs. C. N. Rockwell, as the administratrix of the estate of C. N. Rockwell, deceased, are the only equitable and valid stockholders in said St. Louis & Sandoval Coal & Mining Company, and have full right and power to dispose of all the property of said company which has been dissolved by the decree of this court in original bill in this cause at a former term of this court.

3rd.— That the said equitable and valid stockholders, to wit: Margaret E. Edwards, as executrix of Francis H. Edwards, deceased, Lambert Noland, Henry Wellhoener, Frank Seymour, Chas. Reinhardt, Isaac Main, Jacob Lichty and Mrs. L. N. Rockwell, as administratrix of the estate of C. N. Rockwell, deceased, be, and they are hereby ordered to execute and deliver to the complainant in cross-bill, the Sandoval Coal & Mining Company, a valid deed of conveyance, in the name of the St. Louis & Sandoval Coal & Mining Company, for the said property, to wit: the south half of four acres of land on the north of the right of way of the Ohio & Mississippi R. R. and adjoining Primmer's addition to the town (now village) of Sandoval, and running north as far as Scott street in said addition, and east far enough to contain four acres, with the exception of the streets to be continued through said four acres, from said Primmer's addition, eastward, in the west half of the northeast quarter of section seventeen (17), T. 2 N., R. 1 east, in Marion county, Illinois; also for the mining rights and royalty in and to certain lands and lots conveyed by sundry persons to Ozias Townsend, and described in deeds recorded in Record Book D D, commencing on pages 74 and 90, of deed records of said Marion county, and con-

veyed by said Ozias Townsend to said St. Louis & Sandoval Coal & Mining Company, and by Geo. W. Herod, as receiver, to said Isaac Main, all in Marion county, Illinois, by the fifteenth day of September, 1885, and in default of such deed being made and delivered as aforesaid, by the day aforesaid, that the master in chancery of this court execute such deed of conveyance, and deliver the same to said Sandoval Coal & Mining Company.

4th.— That the said St. Louis & Sandoval Coal & Mining Company, agents and attorney, and all other persons in its name or behalf, be, and the same are hereby, perpetually restrained from prosecuting any and all suits against the Sandoval Coal & Mining Company, either in ejectment for said property or trespass to said property, and that the ejectment suit No. 45, of this term of this court, and the suit for trespass No. 54, of this term, be, and they are hereby, restrained, and their prosecution perpetually enjoined, and said suits dismissed at cost of plaintiff.

It is further ordered by the court that all costs that have accrued herein, both those supplemental bills and cross-bills, be taxed against the defendants in the original bill, and that execution may issue for the same in the name of the complainants in the original bill.

Appeal prayed by defendants in cross-bill. Appeal allowed upon said defendants in cross-bill filing within sixty days from this date, August 25, 1885, certificate of evidence and an appeal bond in proper form, in the sum of one thousand dollars, with good and sufficient security, to be approved by clerk of this court.

The above and foregoing decree was filed August 26, 1885. J. B. Lewis, *Clerk*.

The above decree approved by

Wm. H. Snyder, *Judge*.

The respondent admits that this decree was reviewed by the Supreme Court of Illinois, and affirmed, as in bill stated, and as reported in the case of the St. Louis & Sandoval Coal & Mining Company *et al. vs.* the Sandoval Coal & Mining Company, 116 Ill. 170; and this respondent avers that by virtue of said decree, the master in chancery of said Marion County, Illinois, made, executed and delivered to this respondent, a good and valid deed of said property, under which deed this respondent holds said property, as an absolute and indefinite estate, and not in trust as in amended bill; and this respondent further says the mining rights, or rights to mine, and remove coal, which it has and uses, it secured by purchase and donation from the parties who owned them, and the lands under which such coal is, and not by said conveyance from Main, as in bill stated, for the reason that the title in said old company and in Main, had been lost and forfeited, by reason of failure to sink the shaft within the time limited in the conveyance.

And this respondent, further answering denies that this respondent 'took said property from Isaac Main, with full knowledge and notice of the debts and claims' of said complainant against old company, as stated in the amended bill; but, on the contrary, this respondent says that it then knew nothing of such debts or claims, and it believes there were none, and it insists that so far as this respondent and the complainant are concerned, all business matters existing between them, were fully and finally settled in the said decree of August, 1885, and that the 'so-called' pretenses for not paying complainant, as charged in amended bill, are true.

And this respondent, further answering, denies that the complainant is entitled to the relief or any part thereof, in the said bill of complaint demanded, and prays the same advantage of this answer, as in case of a demurrer to said

bill; and having fully answered all that is material for it to answer, this respondent prays to be dismissed with its costs and charges herein unjustly caused by the complainant.

The other defendants to said bill of complaint Charles Reinhart, Isaac Main, Lambert Noland, Margaret E. Edwards, Lucinda N. Rockwell, Jacob Lighty and Frank Seymour filed their joint and several answers to the bill of complaint of said Ozias Townsend in which they denied all the material allegations in the complainant bill upon which he founded his right of action. They recite the fact that a meeting of the Board of Directors of the St. Louis and Sandoval Coal and Mining Company was held May 2d, 1878. The board was called to order by the secretary in the absence of the president, and Mr. Mears was elected president pro tem. Mr. Blackburn, one of the directors, inquired of the secretary if the books of the company showed that Ozias Townsend is a stockholder in this company, the secretary stated that the books showed that Ozias Townsend is not a stockholder; that all stock held by him has either been sold, forfeited, or transferred by him, and that he is not a stockholder in this company at the present time and that there is a vacancy in the board occasioned by the disqualification of said Ozias Townsend. And that Mr. Main introduced the following preamble and resolution:

Whereas, Ozias Townsend, late president and superintendent of this company has together forfeited for non-payment of assessment, and sold and assigned all stock owned, subscribed for, and held by him in this company; and

Whereas, under article I, Section 2d, of the by-laws of this company, he is no longer eligible to hold office in said company.

Therefore, be it resolved, that the office of president and superintendent be, and is hereby, declared vacant.

And, be it further resolved, that we, the remaining directors of said company, do proceed to elect a president pro tem. to preside at this meetings, vice Ozias Townsend, disqualified as aforesaid. Mr. Mears moved that the above resolutions be adopted, which motion was seconded by Mr. Main; carried, Messrs. Main, Mears, Blackman and Wellhoener voting in the affirmative.

Said respondents also alleged that said meeting held May 2d, 1878, was the last meeting ever held by said board of directors. They further allege that if said Ozias Townsend after that date did anything for said company, or in the name of said company as president, or otherwise, it was done without authority and against the will and interests of respondents, and respondents further alleged the truth to be that said complainant actually but fraudulently issued so-called paid up stock of the St. Louis and Sandoval Coal and Mining Company to the aggregate amount of $10,000, to wit: to his wife, Elizabeth E. Townsend, $5,000; to George W. Wharton, $4,000, and to T. N. Blackman, $1,000, for which said company never received anything.

The respondents further answering deny that the said company or respondents owe said complainant anything and they deny that said complainant is legally or equitably entitled to anything from said company.

The respondents further answering allege that if the complainant ever had any cause of suit or any just claim against the defendants in his bill for or concerning any of the matters, transactions or dealings in said bill of complaint mentioned (which these respondents do not admit, but deny) the same did accrue or arise more than five years before the said bill of complaint was exhibited to the Court; and respondents say and aver that

they did not at any time within five years before the filing of the complainant's bill herein ever promise or agree to pay complainant any money for or concerning any of the matters, transactions or claims in complainant's said bill of complaint charged therein, wherefore they charge that said complainant is barred from having and maintaining his bill of complaint against respondent by reason of the Statute of Limitations of the State of Illinois.

The respondents also recited at length the fact of the institution of the suit in June, 1878, the trial of the case, the rendition of the decree, dissolving the corporation known as the St. Louis and Sandoval Coal and Mining Company, the appointment of a receiver, the appeal of said case to the Supreme Court, its partial reversal and its subsequent trial in the Marion County Circuit Court, said Ozias Townsend and other defendants having filed their answers, and the submission of the case on the 12th of February, 1883, and its final hearing at Chambers July 14th, 1883, and the decree of the Court affirming its previous orders and directing the receiver to make further report; and further at the February Term, 1885, of said Circuit Court, reported the sale of the property to Isaac Main and the sale of the property by Main to the Sandoval Coal and Mining Com pany and the payment by Main of the just debts of the St. Louis and Sandoval Coal and Mining Company, and the receiver reported said company had no other property and that there was nothing further for him to do.

Said respondents recited the filing of the supplemental bill making the Sandoval Coal and Mining Company defendant, and that on the 10th of August, 1885, said cause came up for trial, and that on the 25th of August, 1885, the court having duly considered the case rendered a decree finding that the material allegations in the cross-bill are true and that the sworn answers of Reinhardt,

Edwards, Seymour, Main, Lichty, Noland and Rockwell to said cross-bill are also true; that Isaac Main, L. Noland, Jacob Lichty, C. N. Rockwell, deceased, represented by L. N. Rockwell, administratrix; Charles Reinhardt, Francis H. Edwards, deceased, represented by Margaret E. Edwards, executrix, Henry Wellhoener and Frank Seymour are the only stockholders in The St. Louis and Sandoval Coal and Mining Company who have paid anything on the said stock, and that they are the only parties or stockholders who have any interest in and rights to determine how the assets, if any, of said company, which has been dissolved by the decree of this court, shall be disposed of, to whom, and for what consideration.

That the other defendants in said cross-bill, to wit, Andrew Roll, Johnson A. Power, Albert E. Ross, Jerry A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Sheals, James Collins, John B. Mears, William H. Ross, True N. Blackburn and George W. Wharton never paid anything for their supposed stock in said St. Louis and Sandoval Coal and Mining Company, and if any such stock was issued to them, or either of them, it was wrongfully and fraudulently done, and neither of them had any interest in the assets of said company nor any rights to interfere with the disposition of such assets, and that they have, or some of them have, fraudulently confederated and wrongfully used the name of the said St. Louis and Sandoval Coal and Mining Company in the prosecution of suits for the possession of and injuries to what was once the property of said company, in total disregard of the valid stockholders of said company, and that they should be enjoined from using said name of said company and from prosecuting any such suit.

And said respondent further answering recited fully the entire decree rendered by Hon. William H. Snyder, Judge, and said respondents further answering stated "And these

respondents rely upon these decrees and orders of the said Circuit Court of Marion County, Illinois, which are still in force and unreserved but in all things affirmed by the Supreme Court of Illinois as appears from its order and opinion in the case of St. Louis and Sandoval Coal and Mining Company et al., against Sandoval Coal and Mining Company, 116 Ill. 170, as a bar to the further prosecution of this suit and as a complete defense to the complainant's amended bill of complaint," etc.

Replications were filed to these several answers by complainant, Ozias Townsend, and the case came on in the Circuit Court of the United States for hearing upon the bills, answers, replications and evidence, and upon due consideration the Court dismissed the bill of the complainant and entered a decree for the defendants.

From this decree of the Circuit Court of the United States the complainant, Ozias Townsend, has appealed to the Supreme Court of the United States.

BRIEF.

It will be seen from the record in this case that the litigation began June 27th, 1878, in the Circuit Court of Marion County, State of Illinois. The suit was instituted by several stockholders of The St. Louis and Sandoval Coal and Mining Company against that company and Ozias Townsend, the appellant in this case, and other defendants. It has been made perfectly clear that the sole reason for the institution of this suit was the action of Townsend in presenting a claim for $12,050 against the company and the allowance by the Board of Directors of $10,000 of said claim to be credited to said Townsend in payment of stock subscriptions to said company. This action of the Board of Directors was taken in March, 1878. On the 10th of January previous the company had made a contract with Frank Seymour to sink a coal shaft on its land and the shaft had been sunk 114 feet at the time of the allowance of Townsend's claim for $10,000. The work was suspended and never resumed by the St. Louis and Sandoval Coal and Mining Company. Upon the hearing of this case a decree was rendered appointing a receiver and authorizing the sale of the property for the payment of debts, an appeal was taken from this decree to the Supreme Court of the State of Illinois and was reversed upon the ground of defective service, but remanded for further hearing and the receiver was continued. In the meantime a new corporation had been organized under the name of Sandoval Coal and Mining Company, and the property rights of the old corporation having been sold by the receiver and purchased by Isaac Main was sold and conveyed by him to Sandoval Coal and Mining Company and the proceeds applied to the payment

of the debts of The St. Louis and Sandoval Coal and Mining Company.

When the case again came before the Circuit Court of Marion County, Illinois, the new company, the Sandoval Coal and Mining Company, was made a party to the bill and filed its answer thereto, which is fully set forth in the statement of the case, wherein said company alleged that it was a *bona fide* purchaser for value of said property, that it had expended $25,000 in the development and improvement of the property with full knowledge of said Ozias Townsend and without objection on his part and with the approval of the stockholders, which the Circuit Court of Marion County had decreed were lawfully entitled to control the property.

In this case after it was remanded by the Supreme Court, the issue was clearly made in the supplemental bill, the answer of Sandoval Coal and Mining Company and its cross-bill, that said Ozias Townsend had no just claim against the St. Louis and Sandoval Coal and Mining Company, and that the allowance of $10,000 of said claim by the Board of Directors was a fraud upon the company and the other stockholders and the Circuit Court of Marion County, Illinois, in its final decree of August 25th, 1885, held: —

"1st. That the defendants in the cross bill, Andrew Roll, Johnston A. Powers, Albert E. Ross, Mary A. McCabe, Ozias Townsend, Elizabeth Townsend, Thomas B. Hill, James Shields, James Collins, John B. Mears, William H. Ross, Truen M. Blackman and George N. Wharton are not equitable or valid stockholders in The St. Louis and Sandoval Coal and Mining Company, and that they have no interest in the assets of said company and have no right to interfere with the application of any such assets nor to sue for the same."

From this decree which contained a number of other points of decision, an appeal was taken to the Supreme Court of the State of Illinois by Ozias Townsend and the other defendants, and upon a hearing by the Supreme Court, the decree of the Court below was affirmed. (See case of St. Louis and Sandoval Coal and Mining Company et al. *v.* Sandoval Coal and Mining Company, 116 Ill. 170.)

The appellant, Ozias Townsend, alleges in his bill that the point whether the St. Louis and Sandoval Coal and Mining Company was liable to him for his time and labor spent, and money paid, laid out and expended in procuring mining rights to himself as trustee for said corporation before the organization thereof, and also services and legal fees paid by him, and also his salary as president and *ex officio* superintendent of said corporation from January 1st, 1879, until January 25th, 1886, the date of the decision of the Supreme Court of the State affirming the decree dissolving said corporation, and his traveling expenses while away from home on the business of said corporation, etc., was not determined or adjudicated in said cases or either of them, and that he is not estopped by the decree rendered in said cases, or either of them, from setting up, asserting and claiming his right thereto as a creditor of said corporation.

In reply to this proposition, I will say, —

1st. That the justice of Mr. Townsend's claim for $10,000, against the corporation, must have been before the Circuit Court of the State, and duly considered by it in determining the question whether the $10,000 of stock issued in payment of the $10,000 claim of said Townsend, was valid stock. The stock had been issued to Mrs. Townsend, wife of appellant, George W. Wharton and Truen W. Blackman, and the court held that said Elizabeth Town-

send, Truen M. Blackman and George M. Wharton are not equitable or valid stockholders in said St. Louis and Sandoval Coal and Mining Company. It was of the very essence of the question that the Court should determine whether that stock had been paid for, and in doing this, it was necessary to determine whether the claim of Ozias Townsend allowed by the Board of Directors for $10,000 was a just claim, to be audited and paid upon his stock. The Court held that it was not.

2nd. The Sandoval Coal and Mining Company, in its answer to the bill and supplemental bill, bringing it into court, stated that it had in good faith bought said property from said Isaac Main, and that he received for said property $2,465.30, with which he paid all of the debts of the St. Louis and Sandoval Coal and Mining Company; that it had expended $25,000 in the development of the mines on said property, and said company alleged that said Ozias Townsend and other individual defendants in said case were not bona fide stockholders of the St. Louis and Sandoval Coal and Mining Company, and had no rights as-stockholders therein and prayed the court to so decree, and the court, in its final decree in said case, and in the third paragraph of said decree to which attention is particularly invited, the court ordered, "that the said equitable and valid stockholders, to wit: Margaret E. Edwards and others, are hereby ordered to execute and deliver to the complainant in the cross bill, the Sandoval Coal and Mining Company a valid deed of conveyance in the name of The St. Louis and Sandoval Coal and Mining Comany," for certain property fully described in the decree, being the property in litigation, "by the 15th day of September, 1885, and in default of such deed being made and delivered as aforesaid by the day aforesaid that the Master in Chancery of this court

execute such deed of conveyance, and deliver the same to said Sandoval Coal and Mining Company."

3d. The litigation which began on the 27th of June, 1878, by the institution of a suit by Isaac Main and others, and which continued until the 25th day of January, 1886, and finally terminated on that date, by the Supreme Court affirming the decree of Judge Snyder, rendered in the Circuit Court of Marion County, Illinois, was distinctly a suit to marshal the assets of the St. Louis and Sandoval Coal and Mining Company, for the payment of its debts, and to resist the claim of Ozias Townsend against said corporation. The suit was for no other purpose whatever, and why Mr. Townsend should from time to time, appeal from the decision of the Marion County Circuit Court, to the Supreme Court of Illinois, if the case did not involve any of his pecuniary rights, is past finding out. The Court did marshal the assets, and did apply them to the payment of the debts of The St. Louis and Sandoval Coal and Mining Company, and did dissolve that corporation by decree, because of its insolvency.

The learned counsel for the appellant in his brief at page 80, alleges that, "The new company took all the property of the old —*cum onere* — or charged with the debts of the latter." I am at a loss to understand upon what ground he rests this claim. Nothing of the kind is suggested in the decree of the Circuit Court of Marion County, nor in the opinions of the Supreme Court of the State of Illinois. The sale of the property in question to the Sandoval Coal and Mining Company was approved by the Circuit Court and by the Supreme Court of Illinois. That company was not responsible for the distribution of the proceeds of the sale, nor can it be held responsible for any of the unpaid debts of the St. Louis and Sandoval Coal and Mining Com-

pany, if any such exist. The litigation in the State court went against Mr. Townsend on every point and he is concluded by it, and it is a well settled principle that the courts of the United States will not undertake to reverse or review such decisions of State Courts in a collateral proceeding.

I therefore respectfully submit that the action of the United States Circuit Court in dismissing the bill of the appellant should be affirmed.

GREEN B. RAUM,
Solicitor for Appellees.